

Tenth Quarterly Report of the Independent Monitor for the Metropolitan Police Department



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Executive Summary

This report is the Tenth Quarterly Report of the Office of the Independent Monitor (“OIM”). The OIM is now in its third year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

This quarterly report contains detailed assessments of whether MPD and the City are in “substantial compliance” with the MOA. Paragraph 182 of the MOA provides that

[t]he Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have **substantially complied** with each of the provisions of this Agreement and maintained substantial compliance for at least two years. [Emphasis added.]

The MOA does not, however, define “substantial compliance.” Over the past several quarters, the OIM has participated in discussions among DOJ, MPD, and the City regarding the development of specific standards for measuring “substantial compliance” with each of the substantive provisions of the MOA. The parties agreed that, while MPD’s compliance with the substantive provisions of the MOA will be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s achievement of substantial compliance also will include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and approval are required) and supported with appropriate analysis and explanation.

Last quarter, the OIM circulated a revised draft of the substantial compliance standards that reflects the parties’ current understanding as to the objective standards to be applied in evaluating MPD’s and the City’s compliance with the MOA. With the agreement of the parties, we have included a matrix of the objective substantial compliance standards

at Appendix C of this report. The OIM also circulated last quarter a revised monitoring plan for each of the quarters over the next two years beginning with this quarter. We structured our planned monitoring for this quarter and the next quarter to cover the entire MOA in order to establish by the end of calendar year 2004 substantial compliance evaluations with respect to each of the substantive provisions of the MOA.

Although, as appropriate, we have made substantial compliance assessments with respect to provisions in all of the substantive areas of the MOA, this quarter our objective compliance evaluations were concentrated in the following areas: (1) general use of force policy; (2) use of firearms policy; (3) canine deployments; (4) Use of Force Incident Reports ("UFIRs"); (5) the Use of Force Review Board ("UFRB"); (6) chain of command use of force and misconduct investigations; (7) coordination between MPD and the Office of Citizen Complaint Review ("OCCR") with respect to allegations of officer misconduct; (8) public information and community outreach; (9) MPD's Personnel Performance Management System ("PPMS"); (10) MPD's Performance Evaluation System; (11) use of force and in-service training curricula; (12) MPD's field training officer ("FTO") program; (13) MPD's instructor training and certification program; and (14) MPD's efforts in connection with monitoring, reporting, and implementation.

General Use of Force Policy (MOA ¶¶ 37-40)

MPD has taken significant strides toward achieving substantial compliance with MOA paragraphs 37 through 40 relating to the development and implementation of a general use of force policy. MPD has developed and obtained DOJ approval of a revised Use of Force General Order that includes the provisions required by the MOA. We find that MPD has effectively distributed the Use of Force General Order and that MPD's in-service training program properly and effectively implements the use of force policy. Subject to continuing review and evaluation, and contingent in particular on the results of our monitoring activity and statistical analysis in the coming quarter to assess MPD officers' compliance with the Use of Force General Order, we believe that MPD and the City are currently in substantial compliance with the requirements of MOA paragraphs 37 through 40.

Use of Firearms Policy (MOA ¶¶ 41-43)

MPD has developed and obtained DOJ approval of a Handling of Service Weapons General Order that includes the provisions required by

the MOA, and it has issued a special order governing Carrying Service Firearms While Off-Duty in the District of Columbia. We find that MPD has effectively distributed the Handling of Service Weapons General Order and that MPD's in-service training program properly and effectively implements the use of firearms policy. Subject to the results of our monitoring activity and statistical analysis, we believe that MPD and the City are currently in substantial compliance with MOA paragraphs 41 through 43 relating to the use of firearms policy.

Canine Deployments (MOA ¶¶ 45-46)

MPD has not yet obtained DOJ approval of the revised Canine Teams General Order.¹ Accordingly, MPD is not in compliance with MOA paragraphs 45 and 46. Despite MPD's failure to finalize its policies related to the operations of its canine units, we reported in our Eighth Quarterly Report that MPD appeared to be in substantial compliance with the MOA's requirements related to supervisor approval of canine deployments, and the statistics we report this quarter support that conclusion. This quarter we observed, however, a troubling trend reflecting that nearly half of all canine deployments from January 1, 2004 through August 31, 2004 were authorized by supervisors not affiliated with the canine program. The MOA and MPD policy are clear that canine handlers must first seek deployment authorization from Canine Unit supervisors before seeking such authorization from a non-Canine Unit supervisor. Subject to further exploration into the reasons for this trend, we find that MPD is in substantial compliance with the MOA's provisions related to supervisor authorization for canine deployments.

Use of Force Incident Reports (MOA ¶¶ 53-54)

MPD is not currently in substantial compliance with the MOA's provisions related to use of force reporting and the UFIR, paragraphs 53-54. Although UFIR completion rates appear to have improved significantly this quarter, the current UFIR completion rate of approximately 70% still does not approach the 95% standard that the parties agreed would constitute objective substantial compliance with the

¹ On September 17, 2002, DOJ approved MPD's Canine Teams General Order, which MPD issued on October 7, 2002. In response to deficiencies identified internally and by the OIM, MPD submitted a revised Canine Teams General Order to DOJ on June 4, 2003. See OIM Fifth Quarterly Report at 10-11.

MOA. Moreover, the quality of UFIRs on file with the Force Investigation Team (“FIT”) remains lacking. For example, over half of MPD’s UFIRs are missing the signature and findings of a supervisor. A third are missing the date and time that a supervisor was notified of the underlying use of force. Without this information, not only is MPD out of compliance with the MOA’s standards regarding UFIR quality, it is difficult for the OIM to assess MPD’s compliance with the MOA provisions regarding timely notification of supervisors after a use of force incident and supervisor response to the scene. MPD must devote significant attention to improving the timeliness and quality of UFIRs to substantially comply with the MOA.

Use of Force Review Board (MOA ¶ 67)

MPD is not in substantial compliance with MOA paragraph 67, which relates to the UFRB’s review of use of force investigations. Although MPD obtained DOJ approval of its Use of Force Review Board General Order, we find that as of this time MPD has failed to implement that policy adequately. The UFRB currently is not conducting sufficiently deliberative and thorough reviews of the use of force cases it reviews.

Chain of Command Use of Force and Misconduct Investigations (MOA ¶¶ 64-66, 80-83)

MPD is not in substantial compliance with the MOA provisions related to MPD’s non-FIT use of force and misconduct internal investigations. Although we find that MPD internal investigations substantially comply with certain requirements of the MOA -- such as the absence of conflicts and performance of certain basic elements of sound investigations -- our overall evaluation is that MPD’s non-FIT use of force and misconduct investigations currently do not substantially comply with the MOA requirements in this area. This quarter, for example, we found that only 54.5% of these administrative investigations were completed within the MOA-mandated 90-day window or included documented special circumstances justifying a delay in completion of the investigation. We also found this quarter that only half (50.4%) of these investigations were “complete” and only 58.3% were “sufficient.”

Coordination Between MPD and the Office of Citizen Complaint Review (MOA ¶ 85)

We find that the City and MPD are not yet in substantial compliance with MOA paragraph 85, which requires the development of a

plan delineating the roles and responsibilities of OCCR and MPD. Although MPD and OCCR executed a Memorandum of Understanding (“MOU”) on September 28, 2002 and have been cooperating pursuant to its terms, for many months the parties have been working to finalize a revised MOU, in part to accommodate suggestions from DOJ, that would establish a much more comprehensive definition of the roles and responsibilities of these agencies. That revised MOU is currently under review by DOJ. Also, although compliance with certain of areas of the MOU has been quite good in recent quarters, neither MPD nor OCCR has achieved a consistent compliance rate of 95% or better with the current provisions of the MOU regarding referral of complaints filed with OCCR that exceed OCCR’s jurisdiction, weekly notice to MPD of formal OCCR complaints, the scheduling and attendance of MPD officers at OCCR interviews, and MPD’s responses to OCCR document requests.

Public Information and Community Outreach (MOA ¶ 91)

We find that MPD currently is not in substantial compliance with MOA paragraph 91, which requires that each of MPD’s patrol service areas (“PSAs”) hold public meetings on at least a semi-annual basis and that such meetings be advertised adequately at least a week in advance. Although many of the PSA community outreach meetings we have monitored have been excellent examples of cooperation between a law enforcement agency and the citizenry consistent with the principles of community policing, the frequency and advertisement of these meetings vary greatly by district and currently are inadequate when considered on a citywide basis.

Personnel Performance Management System (MOA ¶¶ 107-117)

With the exception of MOA paragraphs 114.a and 114.b, which relate to the issuance of a request for proposals for the development of PPMS and the selection of a contractor for the project, MPD and the City are not in substantial compliance with the PPMS development and implementation requirements of MOA paragraphs 107 through 117. Although MPD has devoted significant effort to preparing plans for PPMS development and implementation -- including the Joint Application Development Report and Consolidated Fit Gap Analysis Document², draft

² MPD’s Joint Application Development Report and Consolidated Fit Gap Analysis Document (1) summarizes the 14 joint application development workshops held by MPD in the fall of 2003, which were collaborative meetings with anticipated

PPMS Protocol, and plans for compliance with various PPMS-related provisions of the MOA -- none of these materials has been approved by DOJ.

Moreover, MPD and the City have fallen substantially behind in the development of PPMS due to the funding shortfall they are currently experiencing. The parties have not yet agreed upon a third modification to the MOA establishing a revised timetable for PPMS development and implementation.

Performance Evaluation System (MOA ¶ 118)

MPD is not in substantial compliance with MOA paragraph 118 concerning its Performance Evaluation System. MPD has not yet obtained DOJ approval of its draft Enhanced Performance Evaluation System Protocol.

Use of Force and In-Service Training Curricula (MOA ¶¶ 84, 98, 121, 122, 129)

MPD is not in substantial compliance with MOA paragraphs 121.b and 122, which relate to the development and implementation of a use of force training curriculum. MPD has not yet obtained DOJ approval for 3 of its 11 use of force-related lesson plans. MPD also is not in substantial compliance with MOA paragraphs 84, 98, 121.d, and 129 concerning the development and implementation of all in-service training and roll call curricula, including training programs for MPD supervisors and investigators. MPD has not obtained DOJ approval for 6 of its 16 in-service training lesson plans.

Field Training Officer Program (MOA ¶¶ 121.c, 121.f)

MPD is not in substantial compliance with MOA paragraphs 121.c and 121.f, which establish standards related to MPD's FTO program. MPD has not yet obtained DOJ approval of the Enhanced Field Training Officer Program Protocol, and there are currently significant deficiencies in MPD's field training program for probationary patrol officers ("PPOs"), including the absence of formal criteria governing the selection of FTOs.

Footnote continued from previous page

PPMS end-users to identify system requirements, and (2) describes MPD's plans to ensure that PPMS is customized to satisfy MPD's and the MOA's requirements.

Instructor Training and Certification Program (MOA ¶¶ 136-137)

MPD is in compliance with MOA paragraphs 136 and 137, which relate to the establishment of an instructor training and certification program. MPD has selected the State of Maryland Police and Corrections Training Commission (“MPCTC”) Enhanced Instructor Certification Course to train MPD’s police instructors. We have found the MPCTC program to be comprehensive and to satisfy the requirements of MOA paragraphs 136 and 137.

Monitoring, Reporting, and Implementation (MOA ¶¶ 167, 173, 175)

MPD and the City currently are in substantial compliance with MOA paragraphs 167, 173, and 175 relating to the parties’ efforts to facilitate monitoring, reporting, and implementation under the MOA. We have never experienced anything less than full and complete cooperation from MPD and the City. MPD’s Compliance Monitoring Team has been highly effective in coordinating MPD compliance activities in connection with the MOA; facilitating access to MPD employees and the provision to the OIM of data and documents; ensuring that documents and records related to the MOA are maintained; and assisting MPD personnel in their compliance tasks. Moreover, MPD’s quarterly reports are timely and very useful in the preparation of the OIM’s reports.

Conclusion

As reflected in our substantial compliance evaluations this quarter, although MPD and the City have made enormous progress in certain areas governed by the MOA, MPD and the City still have a great deal of work to do in order to demonstrate that they have substantially complied with the MOA. In light of our prior quarterly reports, it should come as no surprise to the parties that significant improvements are necessary in some areas such as UFIR completion and quality, non-FIT use of force and misconduct investigations, and the FTO program. Moreover, this quarter we report with respect to the problems we have identified in the performance of the UFRB. Finally, PPMS development remains at a virtual standstill due to the funding crisis MPD experienced earlier this year.

However, MPD has achieved substantial compliance in certain important areas of the MOA. DOJ has approved MPD’s Use of Force General Order, which is a keystone of the MOA. MPD also has effectively

implemented its Handling of Service Weapons General Order, another central component of the MOA. We also continue to find that MPD's deployments of canine units are made with the required supervisor approval or under exigent circumstances justifying the absence of such approval, although we will monitor further the trend we observed this quarter of non-Canine Unit supervisors frequently authorizing canine unit deployments.

We hope that this quarterly report helps to focus MPD's and the City's efforts on those areas where they are furthest removed from being in substantial compliance with the provisions of the MOA.

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Introduction

This report is the Tenth Quarterly Report of the Office of the Independent Monitor (“OIM”). The OIM is now in its third year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

This quarter marks the transition into monitoring whether, three years after the MOA was signed, MPD and the City are in “substantial compliance” with all of its requirements. Paragraph 182 of the MOA provides that

[t]he Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have **substantially complied** with each of the provisions of this Agreement and maintained substantial compliance for at least two years. [Emphasis added.]

The MOA does not, however, define “substantial compliance.” Over the past several quarters, the OIM has participated in discussions among DOJ, MPD, and the City regarding the development of specific standards for measuring “substantial compliance” with each of the substantive provisions of the MOA.

Last quarter, we reported that the parties had made significant progress in reaching agreement as to the standards that will determine whether MPD and the City have achieved “substantial compliance” with the terms of the MOA. The parties agreed that, while MPD’s compliance with the substantive provisions of the MOA will be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s achievement of substantial compliance also will include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and approval are required) and supported with appropriate analysis and explanation.

Last quarter, the OIM circulated a revised draft of the substantial compliance standards that reflect the parties' current understanding as to the objective standards to be applied in evaluating MPD's and the City's compliance with the MOA. With the agreement of the parties, we have included a matrix of the objective substantial compliance standards at Appendix C of this report. The OIM also circulated last quarter a revised monitoring plan for each of the quarters over the next two years beginning with this quarter. We structured our planned monitoring for this quarter and the next quarter to cover the entire MOA in order to establish by the end of calendar year 2004 substantial compliance evaluations with respect to each of the substantive provisions of the MOA.

Accordingly, the format of this report is significantly different from our prior nine quarterly reports. Similar to our prior reports, we summarize the OIM's monitoring activities undertaken during the current monitoring period, from July 1, 2004 through September 30, 2004. In addition, however, we summarize the history and current status of our monitoring -- and MPD's and the City's compliance efforts -- with respect to each of the substantive areas of the MOA. We also, for the first time, provide detailed substantial compliance evaluations, based on the objective standards agreed to by the parties, with respect to those provisions of the MOA that we, pursuant to our monitoring plan, focused on this quarter. We will provide substantial compliance evaluations with respect to the remainder of the substantive provisions next quarter.

Although, as appropriate, we have made substantial compliance assessments with respect to provisions in all of the substantive areas of the MOA, this quarter our objective compliance evaluations were concentrated in the following areas: (1) general use of force policy; (2) use of firearms policy; (3) canine deployments; (4) Use of Force Incident Reports ("UFIRs"); (5) the Use of Force Review Board ("UFRB"); (6) chain of command use of force and misconduct investigations; (7) coordination between MPD and the Office of Citizen Complaint Review ("OCCR") with respect to allegations of officer misconduct; (8) public information and community outreach; (9) MPD's Personnel Performance Management System ("PPMS"); (10) MPD's Performance Evaluation System; (11) use of force and in-service training curricula; (12) MPD's field training officer ("FTO") program; (13) MPD's instructor training and certification program; and (14) MPD's efforts in connection with monitoring, reporting, and implementation.

Finally, this quarter MPD experienced a significant administrative change with the appointment of Assistant Chief Peter Newsham as head of ROC North, where he will serve as the regional operations commander for MPD's Second, Third, and Fourth Districts. In his former capacity as the head of MPD's Office of Professional Responsibility ("OPR"), Chief Newsham supervised MPD's Compliance Monitoring Team ("CMT") and was the member of MPD's command staff most directly responsible for MPD's progress under the MOA on a day-to-day basis. We wish to commend Chief Newsham for his instrumental role in fostering the close and cooperative working relationship between MPD and the OIM. We wish to commend Lieutenant Linda Nischan as well as she leaves OPR to work with Chief Newsham in his new command. Lt. Nischan's tireless assistance in facilitating our review of hundreds of MPD internal investigations has been greatly appreciated. This quarter, the OIM participated in a meeting with Assistant Chief William Ponton, the CMT, and representatives from DOJ to facilitate Chief Ponton's transition to the new responsibilities he now has with respect to the MOA and his supervision of the CMT in his new position as incoming head of OPR. We welcome Chief Ponton and look forward to working with him more in the coming months.

Compliance Assessment

This report is presented somewhat differently from our prior quarterly reports. Similar to our previous nine quarterly reports, in each section of this report, we first summarize the requirements imposed by each section of the MOA (“Requirements”). We then provide our status report and assessment of MPD’s progress toward compliance with those requirements as well as the current status of our monitoring activity in each of the substantive areas of the MOA (“Status and Assessment”). This quarter, for the first time, our report includes an analysis of whether MPD and the City at this point are in substantial compliance with the requirements of the MOA, in which we provide an assessment of MPD’s current status in achieving substantial compliance, as defined by the objective standards agreed to by the parties, with the substantive provisions of the MOA (“Substantial Compliance Evaluation”). For ease of reference, we have attached a matrix containing the objective substantial compliance standards at Appendix C to this report.

I. General Use of Force Policy Requirements (MOA ¶¶ 36-52)

A. General Use of Force Policy (MOA ¶¶ 36-40)

1. Requirements

MPD is required to complete the development of an overall Use of Force Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the Use of Force Policy must include provisions that:

- Define and describe the different types of force and the circumstances under which the use of each type of force is appropriate;
- Encourage officers to use advisements, warnings, and verbal persuasion when appropriate and in general seek the goal of de-escalation;
- Prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may develop such that the use of deadly force would be authorized;

- Establish that officers must, wherever feasible, identify themselves as police officers and issue a warning before discharging a firearm;
- Require that, immediately following the use of force, officers must examine persons who have been subjected to the use of force and obtain medical care for them, if necessary; and
- Provide specific advice to officers that the use of excessive force will subject them to MPD disciplinary action and potential civil liability and criminal prosecution.

2. Status and Assessment

On September 17, 2002, DOJ approved MPD's revised Use of Force General Order, which is a keystone of the MOA. MPD had originally committed to begin implementing the revised Use of Force General Order during the week of October 6, 2002, with intensive training to follow immediately thereafter. We found that MPD's initial effort to roll out the Use of Force General Order was not as effective as it could have been due to poor coordination in the training of officers in MPD's new use of force policy.³ MPD, however, acted quickly to remedy the deficiencies in its initial training efforts related to implementation of the Use of Force General Order, including, in particular, by creating and conducting a special "sergeants and above" training program for supervisors. We found that the "sergeants and above" training program played a significant role in remedying some of MPD's prior implementation failures.⁴

As discussed in greater detail in Section IV.B.1 of this report, we have consistently found MPD's in-service training regarding the use of force continuum, the Use of Force General Order, the UFIR, and weapon safety and security to be both consistent with the MOA and delivered by knowledgeable and professional instructors.⁵ Thus, we find that MPD's in-service use of force training fairly, accurately, and properly conveys the principles of MPD's use of force policies.

³ OIM Third Quarterly Report at 4.

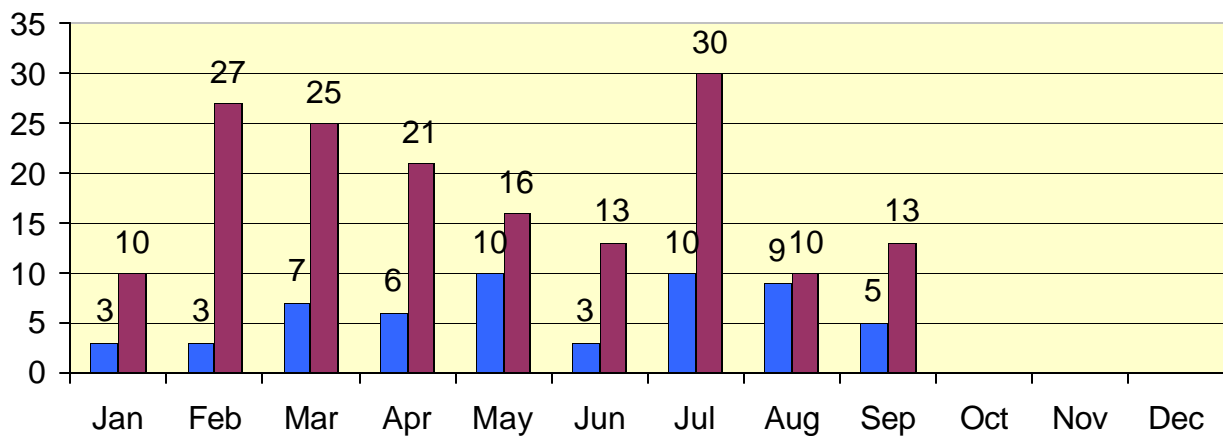
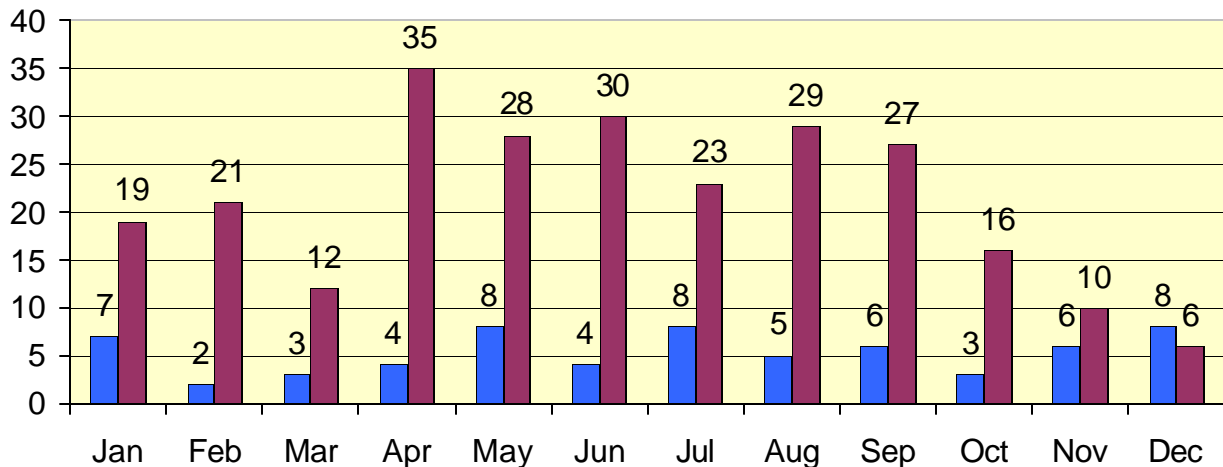
⁴ OIM Fourth Quarterly Report at 5.

⁵ See, e.g., OIM Seventh Quarterly Report at 48-49.

We continue to assess the extent to which actual uses of force by MPD officers are consistent with the Use of Force General Order. For example, the OIM reviews MPD's use of force statistics on a regular basis. While these statistics, alone, do not tell the whole story -- for example, to be put in context, they should be viewed in conjunction with crime data covering the same period -- they do provide relevant information that bears on the effectiveness of MPD's use of force policies and training. Accordingly, we have continued to review these statistics and to report on any apparent trends.

This quarter, we continued our analysis and reporting with respect to use of force statistics. As reflected in the charts below, we have now accumulated 21 months of statistics reflecting MPD use of force incidents on a citywide basis. Although we anticipate this data, in combination with other use of force statistics, will provide useful information regarding MPD's use of force and, over time, will allow for meaningful comparisons to be drawn between time periods, this data cannot yet support any firm conclusions regarding trends in uses of force.

**MPD Citywide Uses of Force January through December 2003
and January through September 2004**



FIT Investigations
 Chain of Command Investigations

As shown in the above charts, with the exception of July 2004, the overall number of uses of force by MPD officers has been significantly lower over the past six months than the number of use of force incidents that we observed during the corresponding six months in 2003. Again, with the exception of July 2004, MPD's relatively low number of use of force incidents over the past six months also seems to run counter to the seasonal variation in total uses of force related to increases in criminal activity following the winter months that we observed in 2003. While the data is insufficient for us to draw any definitive conclusions -- including, for example, whether these encouraging numbers for April through

September 2004 are attributable, at least in part, to MPD's implementation of revised use of force policies, overall declines in criminal activity in the City, or a combination of these and other factors -- the OIM will continue to monitor and review the citywide use of force statistics provided by MPD.⁶

This quarter, the OIM reviewed use of force statistics compiled by DOJ's Bureau of Justice Statistics, the National Institute of Justice, and the International Association of Chiefs of Police ("IACP") in an effort to evaluate whether the use of force statistics reported by MPD are comparable to other departments of a similar size. We also discussed the availability and utility of police use of force data with the Research Program Director of the IACP.

We found that, although several police departments across the nation have at various points in time compiled use of force data, comparisons between such data and current MPD use of force statistics have proven extremely problematic. First, most of the available use of force data from police departments of a size comparable to MPD is not current enough to provide a relevant comparison to uses of force by MPD officers since implementation of the MOA. We also found that there is significant variation between departments as to how uses of force are recorded and categorized. Finally, the uniqueness of the City -- in terms of, among other things, crime rates, the concentration and number of active police forces, and the unique combination of governmental and international activities -- renders identification of "comparable" cities extremely complex and difficult.

However, we believe that meaningful statistics measuring the impact of the MOA's reforms can be developed. For example, in the coming quarter we will evaluate the percentage of use of force incidents involving MPD officers that are not justified or not in conformity with MPD's policies related to the use of force. We believe these figures will be valuable in assessing whether MPD has properly and effectively implemented its revised Use of Force General Order.

⁶ The data reflected in the above charts were obtained from FIT; therefore, their accuracy depends upon the quality of MPD's use of force reporting practices. A use of force about which FIT is unaware will not be reflected in the tables shown above.

3. Substantial Compliance Evaluation

MPD has taken significant strides toward achieving substantial compliance with MOA paragraphs 37 through 40 relating to the development and implementation of a general use of force policy. MPD has developed and obtained DOJ approval of a revised Use of Force General Order that includes the provisions required by the MOA. We find that MPD has effectively distributed the Use of Force General Order and that MPD's in-service training program properly and effectively implements the use of force policies. The rough statistics, described above, appear to reflect an encouraging decrease in the overall number of use of force incidents on a month-to-month basis as compared to last year.

Subject to continuing review and evaluation, and contingent in particular on the results of our monitoring activity and statistical analysis in the coming quarter to assess MPD officers' compliance with the Use of Force General Order, we believe that MPD and the City are currently in substantial compliance with the requirements of MOA paragraphs 37 through 40.

B. Use of Firearms Policy (MOA ¶¶ 41-43)

1. Requirements

MPD is required to complete its development of a Use of Firearms Policy. The policy must comply with applicable law and be consistent with current standards in the law enforcement field. In particular, the Use of Firearms Policy must:

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain service ammunition through official MPD channels;
- Specify the number of rounds that officers are authorized to carry;
- Establish a single, uniform reporting system for all firearms discharges;
- Require that, when a weapon is reported to have malfunctioned during an officer's attempt to fire, it promptly be taken out of service and an MPD armorer evaluate the functioning of the weapon;

- Require that MPD document in writing the cause of a weapon's malfunction -- *i.e.*, whether an inherent malfunction, a malfunction due to poor maintenance, or a malfunction caused by the officer's use of the weapon; and
- Provide that the possession or use of unauthorized firearms or ammunition may subject officers to disciplinary action.

In addition to these specific requirements relating to the Use of Firearms Policy, the MOA requires the Mayor to submit to the Council for the District of Columbia a request to permit MPD's Chief of Police to determine the policy for MPD officers to carry firearms when they are off duty while in the District of Columbia, including any appropriate restrictions applicable to situations in which an officer's performance may be impaired.

2. Status and Assessment

On August 19, 2002, DOJ approved MPD's Handling of Service Weapons General Order, which MPD distributed in early October 2002. As discussed in detail in Section VI.B.1 below, we have consistently found MPD's in-service firearms training and pistol re-certification programs to be consistent with the MOA and conducted by knowledgeable and professional instructors. MPD's in-service firearms training fairly, accurately, and properly summarizes the principles of the Handling of Service Weapons General Order.

On June 4, 2002, the District of Columbia City Council approved an amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City. This measure was signed into law and became effective on October 1, 2002.

On April 1, 2004, MPD issued a special order entitled Carrying Service Firearms While Off-Duty in the District of Columbia. MPD circulated this special order to DOJ and the OIM on April 5, 2004. On June 10, 2004, DOJ provided MPD with several recommendations concerning the special order as a form of technical assistance. The MOA does not provide that the Carrying Service Firearms While Off-Duty in the District of Columbia Special Order must be approved by DOJ.

3. Substantial Compliance Evaluation

MPD has developed and obtained DOJ approval of a Handling of Service Weapons General Order that includes the provisions required by the MOA and has issued a special order governing Carrying Service Firearms While Off-Duty in the District of Columbia. We find that MPD has effectively distributed the Handling of Service Weapons General Order and that MPD's in-service training program properly and effectively implements the use of firearms policy.

Subject to the results of our monitoring activity and statistical analysis in the coming quarter to assess MPD officers' compliance with the Handling of Service Weapons General Order and MPD's treatment of weapons that are reported to have malfunctioned, we believe that MPD and the City are currently in substantial compliance with MOA paragraphs 41 through 43 relating to the use of firearms policy.

C. Canine Policies and Procedures (MOA ¶¶ 44-46)

1. Requirements

The MOA requires MPD to develop a Canine Teams Policy that:

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;
- Requires supervisory approval for all canine deployments -- either a Canine Unit supervisor or a field supervisor;⁷
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect should surrender, and that the suspect should remain still when approached by a canine; and
- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,

⁷

The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

- The handler calls the canine off as soon as the canine can be safely released, and
- MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

2. Status and Assessment

a. Canine Policy and Manual

MPD has not yet obtained DOJ approval of its revised Canine Teams General Order. On September 17, 2002, DOJ approved MPD's Canine Teams General Order, which MPD issued on October 7, 2002. In response to deficiencies identified internally and by the OIM, MPD submitted a revised Canine Teams General Order to DOJ on June 4, 2003.⁸ On July 25, 2003, DOJ provided MPD comments on the revised order and, on September 30, 2003, also provided certain specific policy recommendations intended to provide additional guidance with respect to revision of the Canine Teams General Order. On December 31, 2003, MPD submitted to DOJ a revised Canine Teams General Order as well as specific responses to DOJ's policy recommendations for MPD's canine program. DOJ provided additional comments on the revised Canine Teams General Order on March 31, 2004. On June 26, 2004, MPD submitted a revised version of the general order to DOJ. On September 17, 2004, DOJ returned two final comments with respect to the Canine Teams General Order, which MPD incorporated. MPD submitted the Canine Teams General Order for DOJ final approval on September 24, 2004.

MPD also has not yet finalized its Canine Operations Manual. MPD provided DOJ a draft of this manual on November 27, 2002, and DOJ returned comments related to the manual on September 30, 2003. MPD reports that it has delayed making revisions to the manual pending the finalization of the Canine Teams General Order in order to ensure that the manual and the general order are consistent. MPD hopes to receive final DOJ approval of the Canine Teams General Order soon and reports that it will revise the Canine Operations Manual accordingly.⁹

⁸ OIM Fifth Quarterly Report at 10-11.

⁹ Memorandum of Agreement Progress Report, dated October 8, 2004 ("MPD October 2004 Progress Report"), at 10.

b. Canine Deployments

In our Eighth Quarterly Report, we reported that approximately 98% of a statistical sample of MPD canine deployments in 2003 were made either with appropriate supervisor approval or under “exigent circumstances” justifying deployment of a canine unit without prior supervisor authorization.¹⁰

This quarter, we reviewed the Canine Tactical Field Reports (“TFRs”) completed with respect to all 430 canine deployments made between January 1, 2004 and August 31, 2004. We found that supervisor approval was obtained in 415 of the canine unit deployments that occurred during this period. Of the remaining 15 canine deployments, 14 were made under documented exigent circumstances justifying the deployment without prior supervisor approval.¹¹ Accordingly, 99.8% of the canine deployments between January 1, 2004 and August 31, 2004 either were authorized by a supervisor or made under demonstrated exigent circumstances justifying the absence of supervisor approval.

Although MPD’s supervisor approval rate for canine deployments thus far in 2004 is excellent, our review of the TFRs revealed a potentially troubling trend in the supervisor approvals for these canine deployments. Paragraph 45 of the MOA and the draft Canine Teams General Order require that canine handlers seek deployment authorization from non-Canine Unit supervisors only if the handler first is unable to contact a Canine Unit supervisor.¹² We found, however, that in April, May, June, and August 2004, the majority of authorizations for canine deployments was made by supervisors who are not affiliated with the canine program. Indeed, of the 430 canine deployments during the months January through August 2004, only 49% were authorized by a Canine Unit supervisor. Approximately 48% of the canine deployments during this period were authorized by non-Canine Unit supervisors, while the remaining 3% were made under exigent circumstances.

¹⁰ OIM Eighth Quarterly Report at 10-11.

¹¹ Although the one exception case involved a burglary, the TFR related to that canine deployment lacked sufficient description to permit us to assess whether exigent circumstances were present.

¹² MOA at ¶ 45; GO-RAR-306.01 at Section V.B.1.

This data may indicate either that canine supervisors are frequently unavailable to provide authorization for canine deployments or that canine handlers are routinely seeking approval for deployments from supervisors who are less familiar with canine operations, in contravention of MPD policy. Neither of these possible explanations for the rate of non-Canine Unit supervisor approvals for canine deployments is encouraging. We advised MPD of our findings informally during the OIM's monthly meeting on October 4, 2004, and we will continue to monitor this area.

c. Canine "Bite" Incidents

In our Fourth Quarterly Report, we observed that 17 of the 110 apprehensions involving a canine unit from the third quarter of 2001 through the end of the first quarter of 2003 included a "bite." We reported that this 15.5% bite-to-apprehension ratio was consistent with the ratios experienced in other major city police departments.¹³ Police practices experts have indicated that a bite-to-apprehension ratio of less than 30% is acceptable.¹⁴ DOJ has pointed out that many effectively run canine programs have a bite-to-apprehension ratio of no more than 10%.¹⁵ DOJ, however, shares the view of our police practices experts that a bite-to-apprehension ratio of up to 20% is acceptable for MPD.

In 2003, there were 88 apprehensions recorded involving a canine unit, 16 of which involved a "bite" to the suspect. We found that this bite-to-apprehension ratio of 18% in calendar year 2003 was within the range that police practices experts find acceptable.¹⁶ Although our review of the 13 completed FIT investigations related to these bite incidents found that the uses of force were generally consistent with the requirements of the MOA and with MPD policy, we identified several points of concern that we recommended MPD address through the training of canines and handlers. Specifically, we recommended that

¹³ OIM Fourth Quarterly Report at 14-16. As discussed in our Fourth Quarterly Report, since canine programs and the environments in which those programs are run vary from city to city, we do not mean to suggest that there is a single "appropriate" national bite-to-apprehension ratio.

¹⁴ See, e.g., *Kerr v. City of West Palm Beach*, 875 F.2d 1546 (11th Cir. 1989) ("These experts indicated that less than thirty percent of apprehensions should, on average, result in a bite.").

¹⁵ Letter from William R. Yeomans to Charles H. Ramsey (June 13, 2001).

¹⁶ OIM Eighth Quarterly Report at 12.

MPD's canine in-service training program emphasize (1) the importance of accurate and complete canine deployment reports; (2) close handler control over canines during confrontations with suspects; and (3) reasonable efforts to obtain a suspect's compliance -- including consideration that a suspect may not understand English -- prior to the release of a canine.¹⁷

This quarter, we again reviewed canine-involved apprehensions. From January 1, 2004 through August 31, 2004, MPD's canine units were involved in 37 apprehensions, 7 of which included a "bite" to the suspect.¹⁸ This 19% bite-to-apprehension ratio is still within the range our police practices experts consider acceptable, although it is at the high end of the range. Four of these bites occurred during on-lead tracks, while 3 occurred when the canine had been released off lead. In the coming quarter, we will review closely the FIT investigation reports for each of the bite incidents to evaluate whether these uses of force were consistent with the requirements of the MOA and with MPD policy.

3. Substantial Compliance Evaluation

MPD has not yet obtained DOJ approval of the revised Canine Teams General Order.¹⁹ Accordingly, MPD is not in compliance with MOA paragraphs 45 and 46.

Despite MPD's failure to finalize its policies related to the operations of its canine units, we reported in our Eighth Quarterly Report that MPD appeared to be in substantial compliance with the MOA's requirements related to supervisor approval of canine deployments. The statistics we report this quarter demonstrate that canine handlers either obtain supervisor approval prior to deploying a canine or deploy under documented exigent circumstances justifying the absence of supervisor approval at a very high rate -- 99.8%. This quarter we observed, however, a troubling trend reflecting that nearly half of all

¹⁷ *Id.* at 12-13.

¹⁸ Of the 7 bite incidents we reviewed this quarter, 3 resulted in puncture wounds, 3 resulted in scratches or abrasions, and in one case the nature of the injury inflicted by the canine was not known because the suspect managed to escape after the canine had bit him.

¹⁹ On September 17, 2002, DOJ approved MPD's Canine Teams General Order, which MPD issued on October 7, 2002. In response to deficiencies identified internally and by the OIM, MPD submitted a revised Canine Teams General Order to DOJ on June 4, 2003. See OIM Fifth Quarterly Report at 10-11.

canine deployments from January 1, 2004 through August 31, 2004 were authorized by supervisors not affiliated with the canine program. The MOA and MPD policy are clear that canine handlers must first seek deployment authorization from Canine Unit supervisors before seeking such authorization from a non-Canine Unit supervisor. Subject to further exploration into the reasons for this trend, we find that MPD is in substantial compliance with the MOA's provisions related to supervisor authorization for canine deployments.

We also reserve judgment at this time as to whether MPD is in compliance with the MOA's requirements related to apprehensions resulting in a "bite" to the suspect. Although MPD's bite-to-apprehension ratio has remained consistently below 20%, we need to accumulate additional data in the coming quarter with respect to whether sufficient justification for the use of force existed in those apprehensions in calendar year 2004 that involved a "bite."

Finally, training is a critical component in the assessment of MPD's compliance with the MOA provisions related to the canine program. As discussed in Section VI.B.2 below, the canine unit training sessions we have observed in the past indicate that MPD's training in this area fairly, accurately, and properly conveys the principles and requirements of the MOA and of MPD policy. In the coming quarters, we intend to take advantage of the opportunity to observe the training of several new canines. This new canine training, originally scheduled to begin this quarter, was postponed.

4. Recommendations²⁰

We recommend that MPD continue working with DOJ to finalize the Canine Teams General Order and Canine Operations Manual.

This quarter, we have observed a troubling trend in recent months indicated that nearly half of all canine deployments from January 1, 2004 through August 31, 2004 were authorized by non-Canine Unit supervisors. We encourage MPD to investigate the reasons for this trend and, if appropriate, take action to ensure that canine handlers seek

²⁰ Paragraph 166 of the MOA requires that the "Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement." The "Recommendations" sections of the OIM's quarterly reports are designed to fulfill this responsibility, and the recommendations do not impose additional obligations upon MPD or the City beyond those contained in the MOA.

deployment authorization from non-Canine Unit supervisors only if the handler first is unable to contact a Canine Unit supervisor, in accordance with the requirements of the MOA and MPD policy.

D. Oleoresin Capsicum Spray Policy (MOA ¶¶ 47-50)

1. Requirements

The MOA requires MPD to develop an Oleoresin Capsicum (“OC”) Spray Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the OC Spray Policy must:

- Prohibit officers from using OC spray unless the officer has legal cause to detain the suspect, take the suspect into custody, or maintain the suspect in custody and unless the suspect is actively resisting the officer;
- Prohibit officers from using OC spray to disperse crowds or smaller groups of people, including its use to prevent property damage, unless the acts being committed endanger public safety and security;
- Prohibit the use of OC spray on children and the elderly, except in exceptional circumstances;
- Require that officers provide a verbal warning prior to the use of OC spray, unless such warning would endanger the officer or others, stating that its use is imminent unless the resistance ends; and, whenever feasible, permit a reasonable period for the warning to be heeded;
- Limit the use of OC spray to a person’s head and torso; prohibit spraying from less than three feet away (except in exceptional circumstances); and limit the spray to two, one-second bursts; and
- Decontaminate persons sprayed with OC spray within twenty minutes after spraying, and transport them to a hospital for treatment if they complain of continuing adverse effects or state that they have a pre-existing medical condition that may be aggravated by the spray.

2. Status and Assessment

MPD obtained DOJ approval for its Oleoresin Capsicum Spray General Order in September 2002. MPD began distribution of the Oleoresin Capsicum Spray General Order, along with other use of force-related policies, during the week of October 6, 2002.

MPD's use of OC spray was the subject of detailed and specific review by the OIM during the sixth quarter of our monitoring. In our Sixth Quarterly Report, we recommended that MPD's in-service training provide more focused attention on the use of OC spray, including training on MPD policies regarding OC spray, appropriate techniques for deployment of the agent, and decontamination procedures.²¹

Last quarter, we monitored two in-service firearms training sessions to evaluate, among other things, the extent to which MPD has enhanced its use of force continuum training with respect to the use of OC spray. We found that MPD did not appear to have placed any additional emphasis on training with respect to the use of OC spray, as we recommended in the Sixth Quarterly Report.²² We note, however, that this quarter, on September 30, 2004, MPD obtained DOJ's final approval for the OC Spray Lesson Plan.²³ In the coming quarter, we intend to observe additional in-service use of force training to evaluate MPD's implementation of the approved OC Spray Lesson Plan.

This quarter, we began reviewing use of force investigations related to the use of OC spray for the period July 2003 through December 2003 to evaluate whether MPD officers are using OC spray in a manner consistent with the MOA's requirements and with MPD policy. That review is ongoing, and in the next quarter we will review additional OC spray cases from calendar year 2004.

3. Substantial Compliance Evaluation

MPD has obtained DOJ approval for both its Oleoresin Capsicum Spray General Order and OC Spray Lesson Plan. Our review of MPD's implementation of the OC spray policy and training in this area is ongoing. Accordingly, we reserve our evaluation of MPD's compliance

²¹ OIM Sixth Quarterly Report at 13.

²² OIM Ninth Quarterly Report at 11-13.

²³ MPD October 2004 Progress Report at 26.

with MOA paragraphs 47 through 50 related to the OC spray policy until the next quarter.

E. Implementation Schedule (MOA ¶¶ 51-52)

As discussed above, MPD has obtained DOJ approval for its Use of Force General Order, Handling of Service Weapons General Order, and Oleoresin Capsicum Spray General Order. MPD also has issued a special order relating to Carrying Service Firearms While Off-Duty in the District of Columbia in accordance with MOA paragraph 42, although DOJ approval of that special order is not required under the MOA. MPD, however, has not yet obtained final DOJ approval for the revised Canine Teams General Order. Accordingly, MPD is not in substantial compliance with MOA paragraphs 51 and 52 related to the implementation of use of force policies and procedures.

II. Incident Documentation, Investigation, and Review (MOA ¶¶ 53-84)

A. Use of Force Reporting Policy and Use of Force Incident Report (MOA ¶¶ 53-55)

1. Requirements

The MOA requires MPD to develop a Use of Force Reporting Policy and a Use of Force Incident Report (“UFIR”). The MOA mandates that the reporting policy require:

- Notification of an officer’s supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a UFIR immediately after he or she uses force, including the drawing and pointing of a firearm at another person or in such a person’s direction;
- An officer’s supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;

- Immediate notification to FIT in every instance involving deadly force,²⁴ the serious use of force,²⁵ or any use of force potentially reflecting criminal conduct by an officer;²⁶
- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on UFIRs into MPD's PPMS.

The precise language of the UFIR was the subject of substantial discussion and negotiation between MPD and DOJ subsequent to the execution of the MOA. As a result of this dialogue, the parties agreed upon the following language for inclusion in relevant force-related General Orders:

In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any accusation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.²⁷

²⁴ "Deadly force" is defined in paragraph 15 of the MOA as "any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object."

²⁵ "Serious use of force" is defined in paragraph 33 of the MOA as "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

²⁶ "Use of force indicating potential criminal conduct by an officer" is defined in paragraph 35 of the MOA to include "strikes, blows, kicks or other similar uses of force against a handcuffed subject."

²⁷ MPD January 2003 Progress Report at 9.

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a declination by the United States Attorney's Office ("USAO") and/or issuance of an authorized Reverse-Garrity warning. A "Reverse-Garrity" warning is a statement given to an officer, typically following a declination to prosecute issued by the USAO, requiring the officer to answer questions relating to his or her official duties but precluding the use of statements made by the officer against him in any criminal prosecution.

2. Status and Assessment

a. Use of Force Incident Report

(1) UFIR Completion

DOJ provided final approval of the UFIR on September 17, 2002, and MPD's UFIR completion requirements went into effect in early October 2002. MPD has proposed a revised and simplified UFIR and has submitted the proposed revisions to DOJ. MPD submitted a revised and reformatted UFIR to DOJ on November 20, 2002, and MPD and DOJ have engaged in several rounds of discussions regarding the revised UFIR since that time. On September 24, 2004, DOJ provided MPD with a written response to MPD's April 9, 2004 submission regarding the revised and updated UFIR. MPD reports that it and DOJ are "very close" to reaching a final agreement with respect to the revised UFIR. MPD believes that the revised UFIR form will be a significant improvement over the existing UFIR.²⁸

In our Fifth Quarterly Report, we observed that there appeared to be lingering confusion among MPD officers and supervisors with respect to the UFIR. We also observed that one result of this confusion has been that officers have not completed UFIRs in circumstances where MPD policy provides that they should. In our Sixth Quarterly Report, we reported that the UFIR completion rate, even after discounting uses of force still subject to pending review by the USAO,²⁹ remained a

²⁸ MPD October 2004 Progress Report at 13.

²⁹ Prior to July 2003, MPD's statistics regarding use of force incidents and UFIR completion did not take into account cases that were subject to pending reviews by the USAO. Because officers cannot be compelled to provide statements regarding a use of force prior to a written declination of prosecution by the USAO, UFIRs for those cases were not being completed, but for an excusable reason. Accordingly, our chart regarding the percentage of use of force incidents

problem.³⁰ In our Eighth Quarterly Report, we reported that, after months of gradual and steady improvement, UFIR completion rates had declined precipitously.³¹ Last quarter, with the exception of April 2004, UFIR completion rates remained extremely and disappointingly low.³²

In response to the recent declines in UFIR completion rates, last quarter OPR began preparing reports for the Executive Assistant Chief of Police identifying all outstanding UFIRs by police district. MPD represents that these reports are being used to remind district commanders of uncompleted UFIRs.³³ MPD implemented this reporting procedure as an internal control mechanism to improve UFIR completion by MPD officers.

As reflected in the below chart, the rate at which MPD officers completed timely UFIRs recovered significantly this quarter. UFIR completion rates, after discounting uses of force still subject to pending review by the USAO, were approximately 69.4% in July 2004, 72.8% in August 2004, and 71.4% in September 2004. These rates do not quite equal the nearly 80% completion rates we observed in the final months of 2003, but this improvement after two quarters of lagging percentages is strong movement in the right direction.

Footnote continued from previous page

resulting in a completed UFIR has been modified to subtract from the totals the cases that remain pending a prosecutorial decision by the USAO.

³⁰ OIM Sixth Quarterly Report at 15.

³¹ OIM Eighth Quarterly Report at 17-19.

³² OIM Ninth Quarterly Report at 16.

³³ MPD July 2004 Progress Report at 15.

	Total uses of force investigated by FIT	Total uses of force investigated by chain of command	Total uses of force as reported by FIT	Total number of UFIRs completed as reported by FIT	Uses of force in which no UFIR completed due to pending AUSA review	Percentage of uses of force resulting in completion of UFIR	Percentage of UFIRs completed, not including uses of force in which USAO review is pending
July 1, 2003 - July 31, 2003	8	23	31	13	7	41.99%	54.17%
Aug. 1, 2003 - Aug. 31, 2003	5	29	34	15	6	44.12%	53.58%
Sept. 1, 2003 - Sept. 30, 2003	6	27	33	23	6	69.70%	79.31%
Oct. 1, 2003 - Oct. 31, 2003	3	16	19	15	0	78.95%	78.95%
Nov. 1, 2003 - Nov. 30, 2003	6	10	16	10	3	62.50%	76.92%
Dec. 1, 2003 - Dec. 31, 2003	8	6	14	9	3	64.29%	81.82%
Jan. 1, 2004 - Jan. 31, 2004	3	10	13	9	1	69.23%	75.00%
Feb. 1, 2004 - Feb. 29, 2004	3	27	30	13	2	43.33%	46.42%
Mar. 1, 2004 - Mar. 31, 2004	7	25	32	3	7	9.38%	12.00%
Apr. 1, 2004 - Apr. 30, 2004	6	21	21	14	2	66.67%	73.68%
May 1, 2004 - May 31, 2004	10	16	26	4	5	15.38%	19.05%
June 1, 2004 - June 30, 2004	3	13	16	4	1	25.00%	26.67%
July 1, 2004 - July 31, 2004	10	30	40	25	4	62.50%	69.44%
Aug. 1, 2004 - Aug. 31, 2004	9	10	19	8	7	42.11%	72.73%
Sept. 1, 2004 - Sept. 30, 2004	5	13	18	10	4	55.56%	71.43%

(2) Pointing a Weapon at or in the Direction of a Person

On December 10, 2003, MPD proposed to DOJ a modification to the MOA's requirement that officers complete a UFIR "immediately following the drawing and pointing of a firearm at, or in the direction of, another person"³⁴ MPD believes that, because the MOA does not include the pointing of a weapon within its definition of "use of force," reporting such incidents through the UFIR is not appropriate and has caused substantial concern within the ranks of MPD officers. DOJ maintains that, under certain circumstances, the pointing of a weapon may in fact constitute a use of force and should be reported as such.

³⁴ MOA at ¶ 53.

Accordingly, MPD has developed a draft MPD Reportable Incident Form that would, if DOJ accepts its use, replace the UFIR as the mechanism for tracking “pointing” incidents.³⁵ DOJ responded to MPD’s proposal on February 27, 2004 and raised several process concerns, including ensuring adequate supervisory review of completed Reportable Incident Forms. MPD responded by preparing for DOJ’s review a draft teletype directive intended to ensure that Reportable Incident Forms receive appropriate supervisory review that is comparable to the review required to be performed for completed UFIRs. On September 24, 2004, DOJ commented on MPD’s submission. MPD hopes to resolve outstanding issues related to the proposed Reportable Incident Form early in the coming quarter.³⁶

(3) UFIR Quality

The OIM has reviewed all UFIRs in MPD’s central UFIR files, which are maintained at FIT’s offices, for the months January 2003 through May 2004, and we have identified specific deficiencies in the thoroughness and completeness of a significant proportion of the UFIRs. To permit comparisons between years, we have divided the chart on UFIR quality to distinguish between UFIRs related to incidents occurring in months in calendar year 2003 from the UFIRs related to incidents occurring in months in calendar year 2004.

³⁵ MPD October 2004 Progress Report at 13.

³⁶ *Id.*

Month	Total UFIRs in file	Missing Supervisor's Signature or Finding ¹	Missing Date/Time Notification to Supervisor ²	Missing CS Number ³	Missing Narrative	Missing Other Information
Jan 03	26	19	11	8	5	0
Feb 03	17	13	6	3	5	0
Mar 03	15	9	8	3	2	0
Apr 03	20	13	7	2	4	1
May 03	21	12	7	7	1	2
June 03	19	9	5	7	1	1
July 03	17	9	7	2	1	2
Aug 03	34	17	9	10	2	1
Sept 03	20	11	4	7	0	1
Oct 03	7	4	1	1	2	0
Nov 03	12	10	3	5	1	2
Dec 03	9	8	2	3	1	0
2003 Totals	217	134 (61.18%)	70 (32.26%)	58 (26.73%)	25 (11.52%)	10 (4.60%)
Jan 04	10	3	2	5	0	1
Feb 04	22	14	8	7	2	4
Mar 04	14	12	8	2	0	0
Apr 04	21	9	5	2	0	0
May 04	11	4	4	0	3	0
2004 Totals	78	42 (53.85%)	27 (34.62%)	16 (20.51%)	5 (6.41%)	5 (6.41%)

¹ The UFIR requires the reviewing supervisor to reach a finding on the use of force incident and to make a recommendation. There are spaces on the form for entering this information and for the supervisor's signature.

² The UFIR directs the reporting officer to indicate the date and time the officer notified his supervisor of the use of force incident.

³ There are two places on the UFIR for entering the CS number. The CS number is used to track reports generated in relation to the incident and links the UFIR to subsequent investigations of the underlying use of force incident.

While over half (53.9%) of the completed UFIRs for incidents occurring in January through May 2004 are missing the signature or findings of a reviewing supervisor, this is an improvement over the percentage of UFIRs completed in 2003 that were missing this information. Thus far in 2004, however, the percentage of UFIRs we have found to be missing the date and time the reporting officer notified his supervisor of the use of force incident (34.6%) is approximately the same as the percentage of 2003 UFIRs missing that information (32.3%). Slightly lower thus far in 2004 is the percentage of UFIRs missing CS numbers (20.5%). We found that approximately 6.4% of the UFIRs for 2004 incidents do not provide a narrative describing the incident, which is information that also is required by the form.

(4) Specialized Mission Unit After-Action Report

On March 5, 2003, MPD sent a letter to DOJ proposing an amendment to the UFIR reporting requirement as it relates to certain incidents involving MPD's Specialized Mission Units ("SMUs") during which multiple officers point their service weapons. MPD believes that the UFIR requirement as it relates to such incidents may give rise to delays that adversely affect operational efficiency because it requires multiple officers each taking time to complete a UFIR. As an alternative to the requirement that each officer prepare a UFIR documenting the pointing of a weapon, MPD proposed that the unit manager complete a single "After-Action Documentation Report." DOJ responded to MPD's proposal on August 25, 2003 by suggesting certain revisions to the draft After-Action Report. On December 31, 2003, MPD submitted to DOJ a revised draft "Specialized Mission Unit After-Action Report" incorporating DOJ's comments and a revised Specialized Mission Unit General Order including policies and procedures related to the SMU After-Action Report.

On March 30, 2004, DOJ provided final approval of MPD's Specialized Mission Unit General Order and outlined its remaining concerns with respect to the After-Action Report.³⁷ MPD requested a delay in the requirement that the Specialized Mission Unit General Order be implemented within 14 business days after DOJ's approval of the order. This request arose from MPD's concern that implementation of the Specialized Mission Unit General Order prior to the resolution of outstanding issues related to the Specialized Mission Unit After-Action Report might lead to confusion among officers in the field. Accordingly, MPD requested that implementation of both the Specialized Mission Unit General Order and Specialized Mission Unit After-Action Report be required to take place within 14 business days after DOJ's approval of the Specialized Mission Unit After-Action Report.³⁸ DOJ granted MPD's request, and, on April 9, 2004, MPD responded to DOJ's concerns regarding the Specialized Mission Unit After-Action Report. On September 24, 2004, DOJ provided MPD with its final comments regarding the Specialized Mission Unit After-Action Report, and MPD

³⁷ Letter from Tammie M. Gregg to Captain Matthew Klein (March 30, 2004).

³⁸ E-mail from Maureen O'Connell to Tammie Gregg, Lisa Graybill, and Sarah Gerhart (March 31, 2004).

hopes that all outstanding issues will be resolved by the end of the next quarter.³⁹

b. Assistant United States Attorney Notification Log

Each quarter, the OIM reviews MPD's AUSA Notification Log, which is maintained at FIT's offices. We have consistently found that MPD makes timely notifications to the USAO within 24 hours of a deadly or serious use of force incident.⁴⁰

3. Substantial Compliance Evaluation

MPD is not currently in substantial compliance with MOA paragraph 53 related to use of force reporting and the UFIR. MPD has obtained DOJ approval for the original UFIR, and MPD is currently working with DOJ to gain approval for a revised and updated version of the UFIR that MPD hopes will simplify the form and improve UFIR completion rates. MPD also is continuing to work with DOJ to gain approval for its proposed Reportable Incident Form for tracking firearms pointing incidents and the Specialized Mission Unit After-Action Report, but such approval has not yet been granted.

Although UFIR completion rates appear to have improved significantly this quarter, the current UFIR completion rate of approximately 70% still does not approach the 95% standard that the parties agreed would constitute objective substantial compliance with the MOA. Moreover, the quality of UFIRs on file with FIT remains lacking. For example, over half of MPD's UFIRs are missing the signature and findings of a supervisor, and a third are missing the date and time that a supervisor was notified of the underlying use of force. Without this information, MPD is not in compliance with the MOA's standards regarding UFIR quality, and it is also difficult for the OIM to assess MPD's compliance with the MOA provisions regarding timely notification of supervisors after a use of force incident and supervisor response to the scene.⁴¹ MPD must devote significant attention to improving the timeliness and quality of UFIRs to substantially comply with the MOA.

³⁹ MPD October 2004 Progress Report at 15.

⁴⁰ MOA at ¶ 54.

⁴¹ MOA at ¶ 53.

MPD is in substantial compliance with the MOA's requirements, found in paragraph 54, regarding the timely notification of the USAO of deadly and serious uses of force.

MPD is not in substantial compliance with paragraph 55 of the MOA, which requires that all data captured in the UFIRs be entered into MPD's PPMS. As discussed in detail in Section V.B. of this report, PPMS remains in the early stages of development and no UFIR data has been entered into that system. MPD does appear, however, to be currently satisfying paragraph 55's requirement that all hard copies of completed UFIRs be centrally maintained.⁴²

4. Recommendations

Although the data this quarter suggests an improvement in the rate at which officers are completing UFIRs, particularly compared to the extremely low completion rates we have observed over the prior two quarters, there continue to be serious deficiencies in both UFIR completion and quality. MPD has initiated internal controls with respect to the UFIR, and we recommend that MPD continue to devote significant attention, in terms of training and supervision, to improving the rate at which UFIRs are completed as well as to improving the quality of the information recorded on UFIRs.

B. Investigating Use of Force and Misconduct Allegations (MOA ¶¶ 56-84)

1. Use of Force Investigations (MOA ¶¶ 56-67)

a. Requirements

(1) FIT Use of Force Investigations

The provisions of the MOA that address use of force investigations take as their point of departure the January 1999 creation of FIT as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a protocol for handling the investigation of use of force by MPD and the manner in which such investigations are to be

⁴² Paragraph 55 of the MOA states that hard copies of the UFIRs shall be maintained centrally by OPR. MPD's OPR maintains the UFIRs at MPD's FIT offices, which is satisfactory under the MOA.

coordinated. At the core of the protocol is the requirement to transfer responsibility for MPD criminal investigations involving officer use of force from MPD district violent crime units or other MPD district supervisors to FIT.⁴³

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.⁴⁴

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent their timely completion.⁴⁵

The MOA contains various requirements governing FIT's investigation process and the preparation of an investigation report by FIT. For example, the report prepared by FIT must include:

- A description of the use of force incident and other uses of force identified during the investigation;
- A summary and analysis of all relevant evidence; and
- Proposed findings, which include:

⁴³ Consistent with this approach, the MOA requires that MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it by the MOA. MOA at ¶ 63.

⁴⁴ This deferral of the interview of subject officers is designed to avoid the risk that such compelled interviews might taint the criminal investigation. See *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

⁴⁵ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

- A determination of whether the use of force under investigation was consistent with MPD policy and training;
- A determination of whether proper tactics were used; and
- A determination of whether alternatives requiring lesser uses of force were reasonably available.

(2) Other Use of Force Investigations

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigation reports. Once such investigations are complete, the investigation report must be submitted to the unit commander, who must review it to ensure completeness and to ensure that its findings are supported by the evidence. The unit commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigation file is forwarded to the Use of Force Review Board ("UFRB").⁴⁶

(3) Use of Force Review Board

Subject to approval by DOJ, MPD is required by the MOA to develop and implement a policy to enhance the UFRB as the review body for use of force investigations. The policy developed by MPD must:

- Ensure that the UFRB conducts prompt reviews of all use of force investigations;⁴⁷

⁴⁶ In the event there is evidence of criminal misconduct, the Unit Commander must suspend the use of force investigation and notify FIT and the USAO.

⁴⁷ Recognizing that the UFRB might be overwhelmed by reviewing all use of force investigations, DOJ and MPD agreed to modify the MOA to require the UFRB to conduct timely reviews only of use of force investigations investigated by FIT I or FIT II. Additionally, according to DOJ, it agreed to allow non-FIT force reviews, with some exceptions, to be conducted by chain of command officers (and conclude at the Assistant Chief level) so long as FIT continues to review all

- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, recommend further training where appropriate, and authorize the UFRB to direct MPD district supervisors to take non-disciplinary action to encourage officers to modify their behavior;
- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

In addition to these requirements, the UFRB must conduct annual reviews of all use of force investigations to identify patterns and problems in such investigations. The UFRB must issue a report summarizing the findings of its review to the Chief of Police.

b. Status and Assessment

(1) FIT Manual

DOJ approved MPD's revised Force Investigation Team Organizational Plan and Operations Manual on December 31, 2003.

(2) FIT Use of Force Investigations

The OIM has reviewed all preliminary and final use of force investigation reports prepared by FIT. From the start of this review, we have been consistently impressed with the high quality of the investigations performed by FIT. Over time, FIT has made certain improvements to its investigations of serious uses of force that have added to the quality of these investigations. For example, in our Fifth Quarterly Report we reported that FIT investigations had improved

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non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

because investigators had begun to routinely document whether officers involved in the use of force were impaired, whether a witness canvas had been conducted, the name of the AUSA notified of the serious use of force, and the date and time of such notification.⁴⁸

This quarter we continued monitoring FIT investigations by reviewing FIT use of force investigations finalized during the period March 1, 2004 through June 30, 2004. FIT continues to generate detailed and thorough use of force investigations. We also have found FIT investigations to be timely. For example, this quarter only 1 of the 12 FIT investigations we reviewed was not completed within the 90-day period specified under the MOA.⁴⁹ There appeared, however, to be special circumstances justifying the delay in completion of this investigation because it was a multi-jurisdictional incident and the investigation experienced delays due to the involvement of another police agency.

We also have monitored FIT “roll outs” in response to reports of serious or deadly uses of force. For example, in the seventh quarter of our monitoring we observed a FIT team respond to a weapon discharge by an MPD officer. We reported that FIT was timely notified of the weapon discharge and that a FIT unit responded to the scene quickly and secured the primary scene properly. Although we offered certain critical observations with respect to a secondary scene in this particular incident, our overall assessment was that sufficient FIT personnel were present to accomplish the investigation at the primary scene, including conducting interviews of witness officers and canvassing the area for additional witnesses.⁵⁰

We also have found that, as required by the MOA, FIT -- as opposed to the district chains of command -- is investigating virtually all serious uses of force and uses of force indicating potential criminal conduct by an MPD officer. Each of our five reviews of samples of misconduct and use of force investigations conducted by OPR and the

⁴⁸ OIM Fifth Quarterly Report at 20.

⁴⁹ The tardy FIT investigation was completed six days after the expiration of the 90-day requirement for completion of the report and did not include a description of any “special circumstances” justifying this relatively minor delay.

⁵⁰ OIM Seventh Quarterly Report at 21.

chain of command has found that, in over 95% of the cases, the proper MPD entity investigated the allegation.⁵¹

(3) Other Use of Force Investigations

Beginning with our Sixth Quarterly Report, we have reported on our reviews of statistical samples of chain of command and OPR use of force and misconduct investigations. This quarter, we reviewed a fifth sample of such investigations opened between January 1, 2004 and March 31, 2004. The results generated by our reviews of these five samples of misconduct and non-FIT use of force investigations are summarized in Section II.B.2.b(1) below.

(4) Use of Force Review Board

On January 31, 2003, DOJ approved MPD's Use of Force Review Board General Order. The UFRB is charged with reviewing use of force investigation files in order to make determinations as to whether the force at issue was justified and to identify training needs, equipment upgrades, or policy modifications that may be necessary in light of the facts of particular cases coming before the Board. The UFRB typically meets once a month and is comprised of five members of MPD's command staff, three of whom are permanent members and two seats which rotate among commanders from the districts, with a designated chairperson. The UFRB is supported by a staff person who is a sergeant assigned to FIT.

In our Eighth Quarterly Report, we reported that we had observed a UFRB meeting but had decided to defer reporting on our monitoring of the UFRB until we had the opportunity to monitor additional meetings of the Board.⁵² This quarter the OIM monitored two meetings of the UFRB, one of which was a double session that included the UFRB's panels for both August and September 2004. Over the course of the three UFRB meetings we have monitored, we observed the UFRB review a total of 21 use of force cases.

As we reported to DOJ and MPD during the OIM's November 4, 2004 monthly meeting, we have concluded that the UFRB's meetings

⁵¹ See "Summary of Results of the OIM's Review of Investigation Samples" at Appendix B to this Report.

⁵² OIM Eighth Quarterly Report at 26.

currently are not being conducted in a manner commensurate with the importance of the UFRB's function. With respect to the majority of case reviews we observed the UFRB conduct, communication among the Board members was clearly inadequate. None of the meetings we observed began on time due to a combination of schedule conflicts among Board members and confusion as to the time of the meetings. This confusion resulted in significant wastes of time and reflects that the members of the command staff comprising the Board have not given sufficient priority to the Board meetings, which are a central and crucial component of MPD's internal use of force policy enforcement as well as of the MOA.

We also identified substantive deficiencies in the Board's performance. The Board members' discussion of many of the investigations under review was perfunctory at best. Indeed, the Board's deliberations with respect to many cases lasted less than a minute. Although it appeared to us that at least some of the Board members had fully reviewed all of the cases, the individual Board members' familiarity with the issues presented in the cases was not reflected in their discussions. The Board members appeared to have reviewed the cases with an eye toward simply determining whether the findings of the FIT investigation should be summarily adopted, rather than facilitating a more systematic review of the issues raised by each case. Nor were the discussions we observed conducted with an eye toward discharging some of the specific responsibilities set forth in the MOA, including recommending to the Chief of Police investigative standards and protocols for all use of force investigations and conducting the Board's annual review of all force cases it has reviewed to discern patterns and problems and to prescribe recommendations to address such matters.

Although the Board did engage in a thorough discussion of a minority of the cases, even those discussions were not well organized and did not proceed through the investigation case file in a methodical manner. We saw no evidence that either the Board or its one staff member prepares in advance an agenda for each meeting or a list of issues raised by each use of force case under review. This is both a symptom and a cause of the UFRB's current problems.

c. Substantial Compliance Evaluation

MPD is in substantial compliance with MOA paragraph 57 relating to the development and implementation of a plan for allocation of responsibility for MPD investigations of uses of force. On December 31, 2003, DOJ approved the Force Investigation Team Organizational Plan

and Operations Manual, which, for the reasons discussed below, we find that MPD has effectively implemented.

Paragraphs 58 and 60 of the MOA relate to MPD consultations with the USAO regarding investigations of deadly and serious uses of force and uses of force indicating potential criminal misconduct by an MPD officer. As discussed in Section II.A.3 above, MPD is in substantial compliance with the MOA's requirements, found in paragraph 54, regarding the timely notification of the USAO of deadly and serious uses of force. Subject to our continuing review and evaluation in the coming quarter of (1) further consultations between MPD and the USAO in such cases and (2) MPD's delay in seeking compelled statements from officers who may be criminally prosecuted, we believe that MPD currently is in substantial compliance with MOA paragraphs 58 and 60.⁵³

The OIM reserves until next quarter its substantial compliance evaluation with respect to MOA paragraph 61, which concerns FIT responses to serious and deadly uses of force and uses of force indicating potential criminal misconduct by an officer, exclusion of investigators from involved officers' districts from such investigations, and periodic policy and training recommendations by FIT.

The OIM also is reserving until next quarter its substantial compliance evaluation with respect to MOA paragraphs 62 and 63, which establish requirements related to the timeliness and quality of FIT investigations, in order to complete our quantitative analysis of the FIT investigations we have reviewed since January 2003. Although a finding of substantial compliance requires us to conduct a careful quantitative analysis, our overall qualitative assessment of FIT investigations is reflected in our consistent findings over the past two and a half years that FIT investigations are timely and well done. We expect the numbers to reflect this assessment, but the analysis is not yet complete.

MPD is in substantial compliance with MOA paragraph 64's requirement that the chain of command be excluded from investigating serious or deadly uses of force or uses of force indicating potential criminal misconduct by an MPD officer. All five of our chain of command use of force and misconduct statistical samples to date have found that,

⁵³ Paragraph 59 of the MOA does not impose any substantive requirements on MPD or the City.

in over 95% of the cases we reviewed, the proper MPD entity conducted the investigation.⁵⁴

The OIM's substantial compliance evaluations with respect to MOA paragraphs 65 and 66, which relate to chain of command investigations of uses of force, are provided below in Section II.B.2.c.

MPD is not in substantial compliance with MOA paragraph 67, which relates to the UFRB's review of use of force investigations. Although MPD obtained DOJ approval of its Use of Force Review Board General Order, we find that as of this time MPD has failed to implement that policy adequately. The UFRB currently is not conducting sufficiently deliberative and thorough reviews of use of force cases. We have made MPD aware of the deficiencies we have observed with respect to the UFRB, and in the past MPD has been quick to respond when the OIM has discovered significant problems with MPD compliance. This is an area we will continue to monitor and evaluate in the coming quarter.

2. Investigations of Misconduct Allegations (MOA ¶¶ 68-84, 98-104)

a. Requirements

The MOA establishes a set of procedures for handling the following types of allegations of misconduct against MPD officers:

- Allegations for which an officer has been arrested or charged criminally;
- Allegations where an officer has been named as a party in a civil lawsuit
 - relating to the officer's conduct while on duty or otherwise acting in an official capacity; or
 - relating to the officer's conduct while off duty, and otherwise not acting in an official capacity, where allegations against

⁵⁴ In the coming quarter, we will provide a substantial compliance evaluation with respect to paragraph 64's requirement that investigations directed by MPD's Chief of Police or his designee to be removed from a particular district's chain of command are reassigned either to FIT or another district.

the officer involve physical violence, threats of physical violence, racial bias, dishonesty, or fraud;

- Allegations of unlawful discrimination;
- Allegations of unlawful searches and stops;
- Allegations of unlawful seizures;
- Allegations of retaliation or retribution against officers or other persons; and
- Allegations of all uses of physical violence -- including but not limited to strikes, blows, and kicks -- that is engaged in for a punitive purpose or that is directed against a subject who is not offering resistance.⁵⁵

With respect to allegations in the above categories that are criminal, MPD's OPR is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.⁵⁶ In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

1. Incidents where charges made by an officer for disorderly conduct, resisting arrest, or assault on a police officer are found by a prosecutor or a judge to be without merit; and
2. Incidents where evidence has been suppressed because of a constitutional violation involving potential misconduct by an MPD officer or where a judicial officer either has made a

⁵⁵ The same procedures apply whatever the source of the information to MPD -- whether by self-referral from the officer, reporting by other MPD personnel, or complaint from a source outside MPD.

⁵⁶ The MOA makes clear that a key reason for this consultation requirement is to avoid potential complications for a criminal investigation and potential prosecution posed by administratively-compelled interviews of officers. MOA at ¶ 71.

finding of misconduct against an officer or has requested MPD to conduct an investigation into such an allegation.

In addition to establishing protocols for the assignment of such investigations, the MOA establishes procedures that must be followed in the conduct of such investigations. These procedures for MPD internal investigations require that:

- Interviews of complainants, involved officers, and material witnesses be tape-recorded or videotaped whenever the investigation involves the serious use of force or a serious physical injury;
- Complainants and other witnesses be interviewed individually rather than in groups, and at locations and times convenient for them;
- All appropriate MPD officers and supervisors be interviewed;
- All necessary evidence be collected, analyzed, and preserved; and
- Inconsistencies in statements gathered from officers and other witnesses during the investigation be identified and reported.

Furthermore, the MOA sets forth a series of milestones for the implementation of this overhauled system for conducting misconduct investigations. These include the following:

- MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for sufficient personnel and adequate procedures to implement this objective;
- MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint*

investigations from chain of command supervisors to MPD's OPR;⁵⁷

- The District of Columbia is required to provide the funds necessary to provide for the full implementation of these plans and sufficient resources for administrative complaint investigations to be completed within ninety days of the receipt of a complaint by MPD;⁵⁸
- MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

The foregoing plans must be implemented fully, with all necessary positions filled, by the various deadlines set forth in Joint Modification No. 1 to the MOA, dated September 30, 2002.

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of various witnesses;⁵⁹ and that the cases be resolved in one of several prescribed ways. Based on the investigation, the possible dispositions are “unfounded,” “sustained,” “insufficient facts,” or “exonerated.”⁶⁰

⁵⁷ See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

⁵⁸ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

⁵⁹ The MOA makes clear that there should be no presumption that an officer's statement is entitled to greater weight than the statement of a civilian. MOA at ¶ 99.

⁶⁰ Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to

Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis. Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by a unit commander to determine the existence of any underlying problems and training needs, and the unit commander shall implement any appropriate non-disciplinary actions.

b. Status and Assessment

(1) Investigation Reviews

In the fifth quarter of the OIM's monitoring, we began reviewing use of force and misconduct investigations performed by MPD's OPR and the district chains of command, and the results of our reviews were first presented in the OIM's Sixth Quarterly Report.⁶¹ The statistical sampling methodology we use in selecting the investigation files to be reviewed each quarter by our police practices experts was developed by the OIM, in consultation with MPD and DOJ. The OIM, working closely with our statistical analysis experts at PricewaterhouseCoopers LLP ("PwC"), has developed standardized review procedures that allow our police practices experts to efficiently review MPD investigation files and to report their findings in a consistent manner.

This quarter, the OIM completed its review of a fifth statistical sample of non-FIT use of force and misconduct investigations. To date, we have reviewed a total of 563 of these investigations spanning investigations opened between the effective date of the MOA, June 13, 2001, through March 31, 2004.⁶² Each of our five samples have drawn

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cases where the conduct allegedly took place but did not violate MPD policies, procedures, or training.

⁶¹ OIM Sixth Quarterly Report at 25-30.

⁶² Our first sample, which covered investigations opened from June 13, 2001 through March 31, 2003, included 244 investigations. With the exception of the sample drawn during our eighth quarter of monitoring, which included 79 investigations, each of our subsequent samples have captured 80 investigations with at least 10 drawn from each district. These population sizes are large enough to generate statistically reliable data with respect to these types of MPD investigations as a whole.

proportionately from all of MPD's districts, and each sample is comprised of investigations opened at least 90 days prior to the beginning of the reporting period to ensure that MPD has had the maximum time authorized under the MOA, absent special circumstances, to complete the investigation. We have received exceptional cooperation from MPD -- particularly from MPD's Office of Internal Affairs ("OIA") -- in facilitating our review of the investigation files each quarter.

In response to the OIM's findings with respect to the timeliness and quality of MPD's chain of command investigations, Chief Ramsey requested that the OIM provide MPD with technical assistance in the form of a memorandum discussing the deficiencies our police practices experts had identified while reviewing these investigations.⁶³ On April 9, 2004, the OIM provided Chief Ramsey with a memorandum entitled "Technical Assistance Related to MPD's Chain of Command Investigation" that detailed 18 distinct deficiencies we identified in the chain of command investigations and made specific recommendations to address those deficiencies.

MPD responded very quickly to the recommendations contained in the OIM's technical assistance memorandum by implementing several measures during the ninth reporting quarter intended to improve the quality and timeliness of MPD's internal investigations. First, MPD revised its four chain of command investigation templates to reflect OIM's recommendations and circulated the revised chain of command investigation templates to all of MPD's Assistant Chiefs and Senior Executive Directors. Second, MPD issued a teletype entitled "'Special Circumstances' for Investigations" regarding the documentation of special circumstances justifying the completion of an MPD internal investigation outside of the 90-day window provided under the MOA. Finally, MPD developed an "OPR Investigations Integrity Checklist," which is to be used by OPR officials in connection with reviewing MPD internal investigations for completeness and sufficiency.⁶⁴ Because MPD implemented these reforms only last quarter, additional time must pass before the OIM will be able to measure the effect, if any, these steps will have in improving the timeliness and quality of MPD's internal investigations.

⁶³ Paragraph 166 of the MOA provides that the "Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement."

⁶⁴ OIM Ninth Quarterly Report at 34.

Summary of Results of OIM's Reviews of the Investigations Samples

For reporting purposes, we have divided the results of the OIM's reviews of MPD's non-FIT use of force and misconduct investigations into the following four categories: (1) administration and management of the investigations, (2) conduct of the investigations, (3) unit commander review of the investigations, and (4) the overall ratings regarding the completeness and sufficiency of the investigations. The OIM's specific findings with respect to each of these areas are discussed below.⁶⁵

1. Administration and Management of the Investigations

Our reviews of MPD investigations have found that over 95% of the chain of command investigations reviewed each quarter are free of the types of conflicts of interest that would cast doubt on the integrity of the investigations.⁶⁶ Also, in over 95% of the cases we have reviewed each quarter, the proper MPD entity investigated the allegations at issue.⁶⁷ The consistency with which MPD observes these requirements reflects favorably on the institutional integrity of MPD's system of internal investigations.

We have consistently found that over 95% of MPD's investigative reports for completed investigations include the MOA-mandated elements, including (1) a description of the use of force incident or misconduct alleged, (2) a summary of relevant evidence gathered, and (3) proposed findings and supporting analysis.⁶⁸

Although we observed steady improvement in the timeliness of MPD investigations over the prior three samples, we found that only 52.5% of the cases reviewed this quarter were completed within the 90-day window required by the MOA -- as compared to 48.4%, 53.7%, and 66.9%, respectively, in the samples of cases reported on in our Seventh, Eighth, and Ninth Quarterly Reports.

⁶⁵ We have included at Appendix B to this report a detailed summary of the reviewers' questions and the results generated by our investigations reviews for all five statistical samples analyzed through this quarter.

⁶⁶ MOA at ¶ 80.

⁶⁷ MOA at ¶¶ 57, 61, 64, 68, 72, 79, 80.

⁶⁸ MOA at ¶ 65.

The MOA specifically provides that chain of command investigations may be completed outside of the 90-day window where there exist documented “special circumstances” justifying the delay.⁶⁹ This quarter, only 54.5% of the investigations reviewed either were completed within 90 days or contained documented special circumstances justifying the delay. This figure reflects a significant decline in the percentage of timely investigations reported last quarter, which was 74.0%. Indeed, the timeliness rate for these investigations was lower this quarter than the 60.8% rate we observed in the seventh quarter and the 57.0% rate we observed in the eighth quarter.

2. Conduct of the Investigations

MPD investigators generally conduct sound investigations. For example, this quarter we found that investigators employed appropriate investigative techniques, such as avoiding group interviews (100.0%)⁷⁰ and interviewing all appropriate MPD personnel (96.2%).⁷¹ Moreover, this quarter’s results indicate that investigators generally documented and addressed inconsistencies among officers and witnesses (93.1%)⁷² and addressed all apparent misconduct (98.1%).⁷³ This quarter, we found that MPD investigators avoided giving automatic preference to an officer’s statement over a citizen’s statement in only 71.6% of the cases we reviewed -- which is markedly different from the 98.0%, 94.5%, and 93.4% rates that we observed over the past three quarters.⁷⁴

3. Unit Commander Review of the Investigations

Our reviews have consistently shown that MPD unit commanders review chain of command investigations to ensure both their completeness and that the findings therein are supported by the evidence in approximately 95% or better of the cases.⁷⁵ For example, this quarter

⁶⁹ MOA at ¶¶ 65, 74.

⁷⁰ MOA at ¶ 81.c.

⁷¹ MOA at ¶ 81.e.

⁷² MOA at ¶ 81.g.

⁷³ MOA at ¶ 82.

⁷⁴ MOA at ¶ 99.

⁷⁵ MOA at ¶ 66.

we found that unit commanders complied with this provision of the MOA in 94.7% of the cases we reviewed.

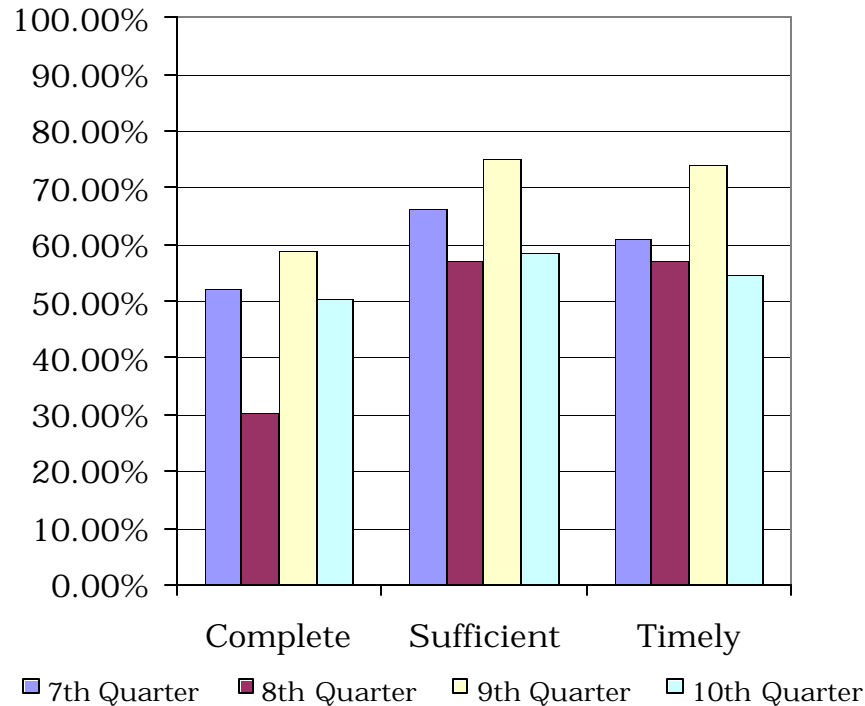
4. OIM Reviewers' Overall Ratings Regarding the Completeness and Sufficiency of the Investigations

Although, as discussed above, MPD has devoted significant attention toward improving the quality of its chain of command investigations, there is significant room for additional improvement. Of the cases reviewed this quarter, we found that 50.4% of the investigations were complete⁷⁶ and that a sufficient⁷⁷ investigation had been conducted in only 58.3% of the cases. As reflected in Appendix B and the graphic below, the completeness and sufficiency statistics we observed this quarter represent a step backward from the encouraging figures we observed last quarter. These statistics are linked to the above-described data on timeliness: In our calculations of these percentages, if an investigation is not completed in a timely fashion, by definition it cannot be counted as complete and in most cases it will be insufficient as well. While there are a significant number of investigations that are incomplete and/or insufficient separate and apart from those that are classified as such because they are untimely, clearly a significant improvement in these percentages would be achieved by improvements in timeliness. The other statistics discussed in this section above are calculated based solely on those investigations that have been concluded in a timely way.

⁷⁶ Our police practices experts rated an investigation “complete” if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

⁷⁷ Our police practices experts rated an investigation “sufficient” if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

Comparison of Quarterly Results



(2) Redeployment of Office of Internal Affairs Investigators

Last quarter, investigators from MPD's OIA contacted the OIM to express concerns related to the periodic redeployment of OIA investigators to the field in connection with MPD's anti-crime initiatives. The OIA investigators' concerns, as they relate to the MOA, appeared to be twofold: (1) that the one-week redeployment of OIA investigators every six weeks hampered the investigators' ability to complete timely investigations within the 90-day period prescribed by the MOA⁷⁸ and (2) that the redeployment of OIA investigators to the districts created the potential for "conflicts of interests" to arise because OIA investigators may be redeployed to serve with or be supervised by subjects of misconduct investigations being performed by the OIA.⁷⁹

⁷⁸ See, e.g., MOA at ¶ 74.

⁷⁹ With respect to the "conflict of interest" issue, it was not clear which particular provision of the MOA was alleged to be violated by the redeployment of officers to

Prior to contacting the OIM, OIA investigators raised their concerns regarding redeployments in several forums. OIA investigators initiated an informal grievance with Chief Ramsey in August 2003, filed a formal grievance with Chief Ramsey in October 2003, hired private counsel to assist with their formal grievance, contacted Councilperson Patterson of the District of Columbia City Council in March 2004, and had a meeting with Chief Ramsey in May 2004. MPD reports that, based on these discussions and the concerns raised by OIA investigators, Chief Ramsey exempted OIA investigators from field redeployments effective August 29, 2004. It appears, therefore, that the potential issues OIA investigators brought to our attention last quarter have been resolved. Of course, we will continue to monitor MPD's performance in satisfying the standards the MOA establishes for misconduct investigations.

(3) Serious Misconduct Investigations General Order

MPD submitted its Serious Misconduct Investigations General Order to DOJ on July 23, 2002. DOJ replied with detailed comments on September 13, 2002, to which MPD responded on November 22, 2002. On January 31, 2003, DOJ responded with a small number of additional comments and commended MPD "for its efforts to revise this MPD [general order] consistent with the MOA and other applicable standards."⁸⁰ MPD submitted a revised draft to DOJ on March 7, 2003. DOJ responded to the revised draft order on August 25, 2003. MPD responded to DOJ's comments and submitted a further revised order on

Footnote continued from previous page

the districts. Paragraph 80 of the MOA, for example, provides that "MPD shall prohibit any officer who has a potential conflict of interest related to a pending misconduct investigation from participating in any way in the conduct or review of that investigation." The OIA investigators' complaint appeared, however, not to be related to a concern that parties with an interest in the outcome of misconduct investigations are becoming involved with or participating in the conduct of those investigations as a result of the redeployment of OIA investigators. Rather, the investigators' complaint appeared to be more in the nature of a concern over the potential that OIA investigators may be retaliated against or placed in compromising situations if they are assigned to work alongside or under the supervision of officers in the districts who are, or may one day be, subjects of OIA investigations.

⁸⁰ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

September 30, 2003. DOJ approved the Serious Misconduct General Order on December 31, 2003.

(4) Chain of Command Investigations Manual

Pursuant to paragraph 83 of the MOA, MPD submitted a draft Chain of Command Investigations Manual to DOJ on October 25, 2002. DOJ provided comments on the manual on March 26, 2003. Paragraph 83 requires that, among other things, the manual “provide investigative templates to assist investigators.” Because MPD wanted to include these investigative templates in the PPMS, final templates had to be submitted to PPMS development vendors by January 12, 2004. In order to facilitate the templates’ inclusion in the PPMS development process, DOJ agreed to provide an expedited review of the draft administrative investigative templates that MPD submitted on December 30, 2003. On January 7, 2004, DOJ provided its preliminary approval of the templates subject to MPD’s acceptance of certain suggested changes to the templates. On January 12, 2004, MPD provided the final revised templates to DOJ and the PPMS development contractor IBM/CRISNet. MPD submitted a revised draft of the Chain of Command Investigations Manual to DOJ for approval on February 26, 2004. DOJ returned comments on the Chain of Command Investigations General Order and Chain of Command Investigations Manual on June 29, 2004, and MPD is currently reviewing those comments.⁸¹

In response to the recommendations contained in the OIM’s April 9, 2004 memorandum entitled “Technical Assistance Related to MPD’s Chain of Command Investigations,” MPD revised its misconduct investigation template and created a “preliminary” misconduct investigation template. These templates were submitted for DOJ’s review on June 7, 2004, and DOJ returned comments on September 24, 2004. MPD is currently considering DOJ’s comments.⁸²

(5) Chain of Command Misconduct Investigations General Order

Pursuant to paragraph 83 of the MOA, MPD submitted its draft Chain of Command Misconduct Investigations General Order to DOJ on

⁸¹ MPD October 2004 Progress Report at 9.

⁸² *Id.*

November 1, 2002. DOJ responded with a number of substantive comments on January 31, 2003. MPD provided an updated draft of this general order to DOJ on December 31, 2003. MPD then submitted a revised version of the Chain of Command Misconduct Investigations General Order to DOJ on February 26, 2004. DOJ provided comments on the draft order on June 29, 2004, and MPD currently is reviewing those comments.⁸³

(6) Corporation Counsel Notification to OPR of Civil Claims

Paragraph 75 of the MOA requires that "[t]he Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD."⁸⁴ After substantial delay in implementing this required notification procedure, on September 7, 2004 MPD's General Counsel sent a letter to the City's Deputy Attorney General and the Claims Manager of the City's Office of Risk Management requesting their assistance in providing MPD with notice once a month of any claims or lawsuits filed that allege misconduct by an officer or employee of MPD.⁸⁵ In the coming quarters we will evaluate the effectiveness of this procedure in satisfying paragraph 75's requirements.

c. Substantial Compliance Evaluation

We reserve until next quarter our evaluation with respect to MPD's compliance with MOA paragraphs 68 and 78, which require that OPR be responsible for investigations of allegations of criminal misconduct and that MPD develop a DOJ-approved plan that allocates sufficient personnel and establishes procedures for the performance of timely misconduct investigations. Although DOJ approved the Serious Misconduct General Order on December 31, 2003, and although we have found that, in over 95% of the misconduct cases we have reviewed, the correct MPD entity conducted the investigation, we are continuing to develop and analyze data with respect to the timeliness of OPR's misconduct investigations.

⁸³ *Id.* at 10.

⁸⁴ We note that on May 26, 2004, Mayor Anthony Williams signed an order renaming the "Office of Corporation Counsel for the District of Columbia" the "Office of the Attorney General for the District of Columbia."

⁸⁵ MPD October 2004 Progress Report at 21.

We reserve until next quarter our evaluation of MPD's compliance with MOA paragraphs 69 through 71, which relate to MPD's prompt notification of and consultation with the USAO regarding allegations of criminal misconduct.

We find that MPD currently is in substantial compliance with the requirements in MOA paragraphs 72, 73, and 79 that OPR conduct investigations of certain categories of alleged officer misconduct and that allegations of excessive force involving the use of deadly force be assigned to FIT for investigation.⁸⁶ MPD has obtained DOJ approval for both the Serious Misconduct Investigations General Order and the Office of Internal Affairs Operations Manual (on March 26, 2003). Our reviews of all FIT investigations and five samples of non-FIT MPD investigations have consistently found that, in greater than 95% of cases, the appropriate MPD investigative unit was responsible for the investigation.

MPD is not currently in substantial compliance with MOA paragraphs 65, 74, and 103, which require that all administrative investigations of officer misconduct be completed within 90 days, absent special circumstances, and that each investigation of officer misconduct contain a final report that includes certain fundamental elements such as a description of the alleged incident, a summary and analysis of the evidence, and proposed findings. As reflected in the statistics reported above, significantly fewer than 90% of MPD's misconduct investigations are timely. Also, we have not found that the chain of command and OPR investigations that we reviewed have included a final report prepared by the investigator at a rate consistently above 95% -- although MPD's performance in this area has been good -- 99.1% and 82.4% in the two most recent samples. The final investigator's reports that we reviewed, however, have consistently included the required elements described above at a rate exceeding 95%.

We cannot find, at this time, that the City is in substantial compliance with MOA paragraph 75, which requires the City's Office of Corporation Counsel (now the Office of the Attorney General) to notify

⁸⁶ Paragraph 73 of the MOA also requires that OPR be assigned to investigate all incidents in which MPD receives written notice from a prosecuting agency in a criminal case where (i) a court has suppressed evidence because of a constitutional violation involving potential officer misconduct or (ii) there has been any other judicial finding of officer misconduct or judicial request for investigation into potential officer misconduct. Our review of such communications between MPD and the USAO is ongoing.

OPR of civil claims against the City alleging misconduct by an MPD officer or employee. After significant delays, MPD and the City established procedures coordinating the required notification process on September 7, 2004. Accordingly, the OIM has not had the opportunity to evaluate the effectiveness of these procedures.

The OIM reserves until next quarter our substantial compliance evaluation with respect to MOA paragraphs 76 and 77, which relate to requirements that MPD officers report both when (1) an officer is arrested or accused in a civil suit of misconduct and (2) an officer observes potential misconduct by other officers.

MPD is in substantial compliance with MOA paragraph 80, which requires that MPD prohibit any officer who has a potential conflict of interest from participating in the conduct or review of that investigation. We have found consistently that greater than 95% of the MPD investigations we have reviewed have been free of apparent or potential conflicts of interest. Indeed, in three of the five quarterly investigation samples, we have found MPD's compliance with this provision to be at 100%.

Paragraphs 81.a through 81.g of the MOA establish substantive requirements for MPD internal investigations. We find that MPD's misconduct investigations substantially comply with the requirements of paragraph 81 of the MOA. For example, MPD investigators have consistently avoided group interviews in 100% of the completed cases we have reviewed over the last three quarters. We found that MPD investigators have consistently interviewed all appropriate MPD officers, including supervisors, in more than 95% of the completed cases. In the last three samples we reviewed, we found that MPD investigators always (100%) interview complainants and witnesses at convenient times and sites where practicable and appropriate. MPD investigations have been slightly less consistent with respect to the requirement that investigators address and document inconsistencies among officers and other witnesses -- over the past four samples, we have found MPD's compliance in this area to be 100%, 91.6%, 100%, and 93.1%, which averages to a 96.0% compliance rate that is sufficient for MPD to be found in substantial compliance.

MPD's completed investigations also substantially comply with MOA paragraph 82's requirements that investigators adequately address the conduct of each officer involved in the incident and adequately address all apparent misconduct. Over the past four quarters, MPD

investigations have averaged rates of 95.8% and 93.9%⁸⁷ compliance, respectively, with these requirements.

MPD is not in substantial compliance with MOA paragraphs 83 and 84, which require the development of a DOJ-approved manual for conducting all MPD misconduct investigations. MPD has not yet obtained MPD's final approval for its Chain of Command Misconduct Investigations Manual or revised Chain of Command Investigation Templates.

The OIM reserves until next quarter its substantial compliance evaluation with respect to MOA paragraph 84, which establishes training requirements for MPD misconduct investigators.

MPD has substantially complied with MOA paragraph 98's requirement that misconduct investigation findings be based upon a preponderance of the evidence standard. We have found that all (100%) of MPD's completed internal investigations reviewed over the three most recent quarters have applied the preponderance of the evidence standard.

MPD does not appear at this time to be in compliance with MOA paragraph 99's requirement that misconduct investigators avoid giving automatic preference to an officer's statement over that of another witness. Although MPD's compliance generally has been good in this area -- 98.0%, 94.5%, and 93.4%, respectively, over the prior three quarters -- this quarter we found only 71.6% of the completed cases we reviewed to be free of this sort of prohibited preference for statements by officers.

We find that MPD is not currently in substantial compliance with the requirements of MOA paragraphs 100 and 101 that all investigations of allegations of misconduct result in a disposition of either "unfounded," "sustained," "insufficient facts," or "exonerated." Over the most recent three quarters, we have found 87.0%, 89.8%, and 87.7% of MPD's completed investigations to satisfy this requirement. Although MPD is not yet in substantial compliance with the requirement that each

⁸⁷ Although MPD's average compliance rate with MOA paragraph 82's requirement that investigators adequately address all apparent misconduct is slightly below 95% over the past four samples, we nevertheless find MPD in substantial compliance with this provision because the percentages for the two most recent samples have been 98.3% and 98.1%.

misconduct investigation result in one of the above four dispositions, we have found that, in over 95% of MPD's completed misconduct investigations, the basis for closing the case was for reasons other than the withdrawal of the complaint or the unavailability of the complainant, as required under paragraph 101.

MPD is not currently in substantial compliance with MOA paragraph 102's requirement that each misconduct investigation include a final report containing a description of the alleged misconduct, a summary of the relevant evidence gathered during the investigation, and proposed findings and analysis supporting the findings. Over the two most recent samples of misconduct investigations, we have found that 99.1% and 82.4% of MPD's completed investigations contain a final report prepared by the investigator. We have found, however, that the final reports, when present in the investigative files, consistently contain each of the required elements at a rate above 95%.

MPD also is not currently in substantial compliance with the MOA's requirements related to unit commander review of chain of command investigations, found at paragraphs 66 and 104. Although we find that unit commanders have consistently reviewed chain of command investigations at a rate greater than 95% across our samples, in light of the various deficiencies we have identified in many of these investigations we cannot find that unit commanders are effectively ensuring that the investigations are complete and that the findings are supported by the evidence with the frequency required under the MOA. We reserve until the coming quarter our substantial compliance evaluation with respect to the responsibility of unit commanders under paragraph 104 to evaluate all misconduct investigations to identify underlying problems and training needs.

Our overall evaluation is that MPD's non-FIT use of force and misconduct evaluations do not currently substantially comply with the MOA requirements in this area. This quarter, for example, we found that only 54.5% of these administrative investigations were completed within the MOA-mandated 90-day window or included documented special circumstances justifying a delay in completion of the investigation. We

also found this quarter that only half (50.4%) of these investigations were “complete” and only 58.3% were “sufficient.”⁸⁸

d. Recommendations

We recommend that MPD continue working with DOJ to obtain approval for its Chain of Command Misconduct Investigations Manual and revised Chain of Command Investigations Templates. We also recommend that MPD continue to work toward improving the timeliness and quality of its chain of command investigations. As discussed above, MPD appears to have taken several steps implement the recommendations contained in the OIM’s technical assistance memorandum as well as to have taken other significant steps intended to improve the investigations performed by MPD’s chain of command. In upcoming quarters, we will be monitoring to determine the effect of MPD’s recent actions with respect to improving its internal investigations.

III. Receipt, Investigation, and Review of Misconduct Allegations (MOA ¶¶ 85-97)

A. Requirements

This section of the MOA addresses the procedures designed to help members of the public aggrieved by the actions of MPD officers lodge complaints concerning officer conduct. It relates to MPD’s role in facilitating the filing of such complaints and also to MPD’s responsibility to coordinate with the OCCR to ensure that the respective roles and responsibilities of MPD and OCCR are clearly defined and that the agencies are working properly together.

More specifically, the MOA requires the following:

- The development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OCCR with regard to
 - Receiving, recording, investigating, and tracking complaints;

⁸⁸ These percentages are down from last quarter’s results, which found 58.8% of MPD’s investigations to be “complete” and 74.9% to be “sufficient” at the time we reviewed them.

- Conducting community outreach and education regarding making complaints against officers;
- Exchanging information between MPD and OCCR; and
- Defining the responsibilities of the MPD official who serves on the Citizen Complaint Review Board (“CCRB”).
- The provision of adequate funding and resources for OCCR to carry out its responsibilities as defined both by the MOA and the law creating OCCR;⁸⁹
- The development of a plan to ensure that the investigative staff of OCCR is adequately trained, including training in a wide range of MPD policies and procedures;
- The development of a manual, in consultation with DOJ, for conducting OCCR complaint investigations, which should include timelines and investigative templates;
- The development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, fact sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OCCR complaint processes;
- The broad availability of complaint forms and informational materials at OCCR, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.⁹⁰

⁸⁹ District of Columbia Law 12-208.

⁹⁰ The program must include at least the following elements: one open meeting per quarter in each of the patrol service areas for the first year of the MOA and one meeting in each patrol service area semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the

The MOA also sets forth various methods designed to facilitate the filing of complaints against officers. These methods include:

- Requiring officers to provide their names and identification numbers to any person who requests them;
- Requiring that MPD provide the means for citizens to file complaints by all available methods, including in person, in writing, or by telephone, facsimile, or electronic mail;
- Requiring the establishment of a hotline, operated by OCCR, that will be appropriately publicized by the City and MPD and that will be audited to ensure its proper operation; and
- Ensuring that responsibility for receiving all complaints filed directly with MPD belongs to MPD's OPR, which must establish filing and tracking systems and coordinate with OCCR.

B. Status and Assessment

1. Coordination and Cooperation Between MPD and OCCR Generally (MOA ¶ 85)

MPD and OCCR continue to work on a revision of the Memorandum of Understanding ("MOU") previously signed by the two agencies on September 28, 2002. In April 2003, MPD advised the OIM that it would issue a revised MOU by June 30, 2003. MPD and OCCR did not meet this deadline. On October 7, 2003, MPD and OCCR submitted a revised draft MOU to DOJ. This draft did not resolve a then-outstanding issue between MPD and OCCR related to the duties of the MPD member of the CCRB. On December 3, 2003, DOJ advised MPD and OCCR of its concern regarding the delay in finalizing the MOU. On December 31, 2003, MPD requested that DOJ proceed with its review

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MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

of the draft MOU prior to the resolution of this outstanding issue. On May 3, 2004, MPD and OCCR notified DOJ that the parties had agreed to the revised “MPD member recusal” section of the MOU, which was the remaining outstanding issue. On May 25, 2004, DOJ provided the parties with comments on the draft MOU.

This quarter, DOJ also suggested that OCCR request MPD’s assistance with the timely scheduling of all officer interviews, including both initial interviews and any rescheduled interviews. MPD and OCCR agreed to modify the MOU further to provide for MPD taking a more active role in assisting OCCR with the re-scheduling of MPD officers who fail to appear for OCCR interviews or other proceedings. MPD agreed to include additional language in the MOU on this point and submitted a revised draft of the MOU to DOJ on September 24, 2004.⁹¹

a. Complaints Filed with MPD on MPD Forms Involving OCCR Subject Matter

In prior quarters, we found that MPD’s OPR had failed to notify OCCR of formal complaints lodged with MPD that involve allegations that could have been filed (at the complainant’s election) with OCCR.⁹² Paragraph 94 of the MOA and provisions of the MOU require that OPR notify OCCR of any complaints filed with MPD that allege harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment.⁹³ The draft MOU will require that MPD provide OCCR with quarterly reports that include, among other things, (1) a statistical summary of complaints filed with MPD that include at least one allegation that falls within OCCR jurisdiction and (2) a description of the final disposition of complaints received by MPD that could have been filed with OCCR.⁹⁴ In the coming

⁹¹ MPD October 2004 Progress Report at 18.

⁹² OIM Fifth Quarterly Report at 31.

⁹³ MOA at ¶ 94; MOU at ¶ 3.B. The MOU also requires OPR to notify OCCR of complaints within the categories identified in paragraph 94 of the MOA as well as the additional category of complaints alleging “retaliation.” The MOA and MOU also differ in that the MOA requires OPR to provide notice to OCCR “[w]ithin 24 hours, or the next business day,” while the MOU states that OPR must provide notice to OCCR “within ten (10) business days.” The new draft MOU requires OPR notice “by email within 24 hours, or the next business day” of complaints within the above categories if MPD is going to investigate the allegations. Draft MOU at Section III.B.7.

⁹⁴ Draft MOU at Section III.B.9.

quarter, the OIM will review the status of MPD's compliance with the requirements of MOA paragraph 94 and MOU paragraph 3.B.

b. Complaints Filed with OCCR that Exceed OCCR's Jurisdiction

This quarter, OCCR referred 5 citizen complaints to MPD because they did not fall within OCCR's investigative jurisdiction. OCCR satisfied the MOU's 10-business-day referral requirement in each of these cases, which is a 100% compliance rate this quarter.⁹⁵ Last quarter, OCCR's compliance rate on this requirement was 90%. We observed a 63% compliance rate in the first quarter of 2004⁹⁶ and an 80% compliance rate in the last quarter of 2003.

c. Weekly Notice to MPD of Formal OCCR Complaints

The MOU requires OCCR to notify MPD on a weekly basis of formal citizen complaints filed with OCCR.⁹⁷ We reviewed 36 formal complaints lodged with OCCR this quarter to assess OCCR's compliance with this requirement. OCCR met the weekly notification requirement in 30 of the 36 cases, which is a compliance rate of 83%. OCCR's rates of compliance with this provision of the MOU for the prior three quarters were 90%, 76%, and 86%, respectively.

d. Interviews of Witness Police Officers

This quarter, the OIM reviewed data relating to 83 scheduled interviews of MPD officers. In 10 of these 83 cases, OCCR did not provide the officer with at least one week's advance notice of his or her required appearance, an 88% compliance rate.⁹⁸ OCCR's compliance rates with this provision of the MOU over the prior three quarters have

⁹⁵ MOU at ¶ 3.C.

⁹⁶ OCCR attributed this dip in its timely referral rate to the agency's implementation of new complaint management software in January 2004 and a related review of open complaints by OCCR which identified complaints that should have been referred to MPD earlier but had not been. Those untimely referrals were made last quarter, which contributed to the decline in the observed rate of timely referral of complaints by OCCR to MPD in the first quarter of 2004.

⁹⁷ *Id.*

⁹⁸ MOU at ¶ 3.D

been 96%, 89%, and 93.5%, respectively. MPD officers failed to appear for 10 of the 73 interviews for which the requisite one-week notice was provided. Thus, this quarter, MPD officers failed to appear for approximately 19% of properly noticed OCCR interviews, which is the same percentage we observed last quarter. In the previous quarter, documented in our Eighth Quarterly Report, we found no instances in OCCR's records in which an MPD officer missed a scheduled interview.⁹⁹

e. MPD Documents Requested by OCCR

Under the MOU, MPD must respond to an OCCR document request within 10 business days.¹⁰⁰ This quarter, we reviewed data reflecting a total of 151 document requests directed by OCCR to MPD. MPD failed to produce the requested documents within 10 business days in response to 90 of the 151 requests, which is a compliance rate of only 40% this quarter. This is an increase over the 22% compliance rate we reported last quarter, but it falls far short of the 58% and 69% compliance rates we observed over the seventh and eighth quarterly reporting periods.

2. Public Information and Outreach (MOA ¶¶ 87-91)

a. Citizen Complainants

On January 31, 2003, DOJ approved the communications plan developed by MPD's Office of Corporate Communications. In our Third Quarterly Report, we reported that MPD had finalized and begun distributing community outreach materials, including flyers and posters explaining the citizen complaint process.¹⁰¹ On September 8, 2004, MPD advised DOJ and the OIM that it had changed the e-mail address for citizen complaints and that MPD intends to update its citizen complaint promotional materials to reflect this change.¹⁰² MPD's Web site contains information concerning the citizen complaint process, including

⁹⁹ OIM Eighth Quarterly Report at 40.

¹⁰⁰ MOU at ¶ 3.E.

¹⁰¹ OIM Third Quarterly Report at 43.

¹⁰² MPD October 2004 Progress Report at 17.

instructions on how to file a complaint with both OPR and OCCR, as well as downloadable complaint forms.¹⁰³

In our Eighth Quarterly Report, we reported the results of our survey of citizens who had filed complaints with MPD. The purpose of our survey was to assess citizen complainants' satisfaction with the manner in which MPD investigated their complaints. The results of this survey were not scientific and cannot be extrapolated to assess the level of citizen satisfaction with MPD's complaint investigation process as a whole. We found, however, that there appeared to be significant room for improvement, particularly with respect to MPD's notification of complainants of the outcome of MPD's investigation of their complaints against officers.¹⁰⁴

b. Community Meetings

The MOA requires that, after the first year of the MOA, MPD hold at least one community outreach and public information meeting semi-annually in each of the patrol service areas ("PSAs") in the City.¹⁰⁵ The MOA also requires that, at least one week before such meetings, the City publish notice of the meeting in public areas, including "libraries, schools, grocery stores, [and] community centers,"¹⁰⁶ and on the Internet. Notices related to community outreach and public information meetings must be in the primary languages spoken in the communities located in the particular PSAs.¹⁰⁷

Over the past two quarters, we have monitored community meetings held in PSAs in MPD districts throughout the City. We have observed a range in the quality of these community meetings -- from lively sessions with broad participation by MPD officers and members of the community, to meetings that failed to take place at the times and locations advertised on MPD's community calendar Web site.

This quarter, we monitored community outreach meetings scheduled in the Second, Third, and Seventh Districts. Although two

¹⁰³ http://mpdc.dc.gov/serv/citizencomplaints/file_complaint.shtm.

¹⁰⁴ OIM Eighth Quarterly Report at 42-43.

¹⁰⁵ MOA at ¶ 91.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

MPD supervisors and an AUSA were present and on time for the meeting scheduled for PSA 206 this quarter, no citizens from the community attended the meeting, which was cancelled after 30 minutes. The meeting we observed for PSA 306 was well attended by representatives from MPD and approximately 30 members of the community. This was a successful meeting, the atmosphere of which we found to be one of cooperation and mutual respect.

Finally, we attempted to attend scheduled meetings posted on MPD's Web site for two PSAs in the Seventh District. According to the community calendar posted on MPD's Web site, these meetings were scheduled to take place during the same evening at the Seventh District's headquarters. MPD personnel at the station told us that they were unaware that meetings had been scheduled for that evening, and in fact neither meeting was held. We were directed to the community center at a local hospital as the possible location for the second meeting scheduled for that evening. We visited the hospital and spoke with its administrator, who was unaware of any MPD community meeting scheduled at his facility that evening. We remained at the hospital until after the scheduled start time, and no meeting occurred. We observed no flyers or other material advertising the scheduled community meetings in either the Seventh District headquarters or the hospital community center.

Last quarter, the OIM monitored community meetings held in PSAs 301 and 402. We observed the meeting in PSA 301 to be spirited and lively, and it addressed topics including gang activity, street lighting, communication difficulties between ethnic groups, panhandling, graffiti, vandalism, management of park property, and crime statistics. The MPD commander in attendance provided an overview of a recent major drug-related arrest in the PSA. The meeting in PSA 301 was attended by three MPD members and nine members of the community. No MPD members attended the meeting held at PSA 402 due to the funeral proceedings for President Reagan. The meeting went forward, nevertheless, and major topics of discussion were the difficulty community members were experiencing in traveling to the meeting site and the lack of notice regarding the time and location of community meetings in PSA 402.

Last quarter, we also canvassed schools, service stations, recreation and community centers, libraries, and major grocery stores in PSAs 404 and 405 in advance of scheduled community outreach and public information meetings to monitor compliance with the MOA's notification requirements. Community notification in those PSAs was

spotty at best and not nearly as comprehensive as required under the MOA. In PSA 404, we found no notices available at the schools, library, and grocery store we canvassed. There were flyers, printed in English, available at the police station. In PSA 405, we did not find notices in the convenience store and school we canvassed. Flyers printed in Spanish and English were available, however, at a community recreation center we visited.

Over the course of our monitoring, we have found that the quality of community calendar information posted on MPD's Web site varies a great deal by district. Most districts, including the First, Second, Third, Fourth, and Fifth Districts, post a substantially detailed and up-to-date calendar of events on the Web site. Until recently, the community calendars for other districts, such as the Sixth and Seventh Districts, were essentially devoid of information. For the reasons discussed above with respect to our attempts to monitor community meetings that appeared to be scheduled in the Seventh District, it appears that the information on the Web site community calendars is not always accurate. Also, to the extent the districts may be relying heavily on the calendars posted on MPD's Web site to notify the public about community outreach meetings, we are concerned that such an approach is both inconsistent with the terms of the MOA and presumes, probably incorrectly, that most citizens in each of the districts are able to readily access the Internet.

3. Receipt of Complaints by OCCR (MOA ¶¶ 92-95)

As noted in our Third and Fourth Quarterly Reports, on or about December 11, 2002, the OCCR hotline required by paragraph 93 of the MOA became operational. We noted in our Fourth Quarterly Report that, while OCCR recorded calls as required by the MOA, it had not yet developed the necessary auditing procedures to ensure "that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained, although OCCR does check this last requirement through its general auditing of all complaints it receives."¹⁰⁸

¹⁰⁸ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

In July 2003, OCCR proposed a modification to the requirement under paragraph 93 of the MOA that OCCR tape record all conversations on the hotline and develop an auditing procedure that includes monthly reviews of a random sample of tape recordings.¹⁰⁹ Citing a combination of personnel shortages and limitations in the equipment's recording capacity, OCCR proposed the elimination of the tape recording requirement of paragraph 93.¹¹⁰ As an alternative, OCCR proposed that its Chief Investigator or Assistant Chief Investigator audit the program by making follow-up calls to a random sample of citizen complainants in order to assess compliance with the mandates of paragraph 93. The OIM would then monitor OCCR's compliance with these provisions of the MOA by reviewing OCCR's written reports of the follow-up calls.

In response to OCCR's proposal, DOJ expressed its concern that the proposed plan might not adequately accomplish the objectives of paragraph 93 because of the variety of problems that could arise in conducting audits based on follow-up telephone calls to citizen complainants (*i.e.*, complainants may have changed addresses or phone numbers, may be difficult to reach, may not remember details about their calls, etc.). DOJ also expressed the concern that the OIM's monitoring may be less accurate if it reviews OCCR's written reports as opposed to auditing tape recordings of calls or conducting the telephone audit itself.¹¹¹ To allow adequate time to evaluate OCCR's proposed auditing procedures in light of DOJ's concerns, DOJ granted provisional approval of OCCR's proposed plan for a six-month period, beginning on August 29, 2003. DOJ also requested that the OIM review OCCR's proposed hotline auditing procedures. If OCCR's proposed hotline auditing procedures were found to operate satisfactorily, DOJ stated that it would consider a formal modification to paragraph 93 of the MOA.¹¹²

On March 31, 2004, the OIM issued a memorandum to DOJ and OCCR regarding OCCR's proposed modification to paragraph 93 of the MOA as that provision relates to the tape recording and auditing of calls

¹⁰⁹ Letter from Tammie M. Gregg to Deputy Director Thomas Sharp (August 25, 2003).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

placed to OCCR's citizen complaint hotline.¹¹³ Our review of OCCR's processes for receiving citizen complaints generated useful information regarding the various means citizens use to lodge complaints regarding MPD officers. We found that only approximately 5.3% of the complaints received by OCCR in 2003 were placed through the hotline. OCCR received an average of only 2.58 calls per month to the hotline in 2003. By comparison, 289 -- approximately half (49.7%) -- of the complaints OCCR received in 2003 were placed through OCCR's regular business telephone lines, which are not subject to any tape recording or auditing procedures under the MOA. The chart below summarizes the sources of all citizen complaints placed with OCCR during calendar year 2003.

	Hotline	Fax	Phone	Mail	Walk In	MPD	Other	N/A	Total
Jan '03	2	3	24	6	9	1	0	0	45
Feb '03	0	4	19	6	2	0	0	0	31
Mar '03	2	4	32	15	2	2	0	0	57
Apr '03	10	7	39	9	10	1	1	1	78
May '03	6	1	12	5	17	0	0	0	41
Jun '03	2	1	25	9	10	0	0	0	47
Jul '03	3	7	25	8	8	0	0	0	51
Aug '03	3	6	23	10	6	0	1	0	49
Sep '03	2	4	18	14	12	1	0	4	55
Oct '03	0	1	21	6	10	1	0	1	40
Nov '03	1	1	30	15	3	1	0	2	53
Dec '03	0	2	21	8	1	2	0	1	35
Total	31	41	289	111	90	9	2	9	582
Percent of total	5.3%	7.0%	49.7%	19.1%	15.5%	1.5%	0.3%	1.5%	

In light of the infrequency with which the OCCR hotline is used and the availability of viable quality control alternatives, the OIM recommended that DOJ and the City agree to amend paragraph 93 of the MOA to replace that provision's hotline-specific tape recording and auditing requirements with a citizen complainant survey procedure. In addition, we suggested that DOJ and the City consider making survey-based audit procedures applicable to all complaints received by

¹¹³ Memorandum from Michael R. Bromwich to Philip K. Eure, Thomas Sharp, and Tammie M. Gregg regarding Office of Citizen Complaint Review's Proposed Modification of MOA ¶ 93 (March 31, 2004).

OCCR from the general public, regardless of the medium through which the complaints are made.¹¹⁴

This quarter, OCCR stated that it is considering the withdrawal of its proposal to replace paragraph 93's recording requirement with a survey-based audit procedure. OCCR reported that it found itself able to devote sufficient funds to purchase the recording equipment necessary to establish the tape recording-based audit procedure prescribed by paragraph 93. OCCR currently is in the process of installing the recording equipment. Once that process is complete, we will monitor the effectiveness of OCCR's hotline auditing program. Despite OCCR's suggestions that it may withdraw its request to modify paragraph 93, we continue to recommend that OCCR establish survey-based audit procedures to internally monitor the public's experience and satisfaction with all of the various means by which citizens lodge complaints with OCCR.

MPD has not finalized and obtained DOJ approval of its Citizen Complaint General Order related to MOA paragraph 94. MPD submitted a draft of the general order to DOJ on October 4, 2002, and DOJ replied with comments on November 25, 2002. MPD forwarded the draft general order to OCCR on December 27, 2002, and OCCR returned its comments to MPD on January 17, 2003. On December 8, 2003, MPD provided OCCR with a revised draft of the Citizen Complaint General Order that incorporated the relevant provisions of the MOU. OCCR returned comments to this draft on December 8, 2003. On March 23, 2004, MPD notified DOJ that the Fraternal Order of Police ("FOP") had raised concerns regarding OCCR and the draft Citizen Complaint General Order. On April 30, 2004, OCCR provided the FOP with further clarification regarding that agency's policies, and the FOP provided its comments on the Citizen Complaint General Order to MPD on June 29,

¹¹⁴ As discussed in our Eighth Quarterly Report, the OIM has experienced a low response rate in connection with our efforts to survey citizen complainants regarding their experiences with MPD misconduct investigations. We believe that several factors increase the likelihood that survey-based audit procedures may be effective in assessing the OCCR complaint and investigation process, including (1) OCCR is required under the D.C. Code to obtain the complainant contact information that would facilitate survey-based audit procedures; (2) OCCR, as an independent agency, should be able to obtain a reasonably high degree of citizen cooperation in the audit process; and (3) OCCR should be able to conduct its citizen surveys on a timely basis while citizen contact information is most likely to be current and reliable.

2004. MPD reports that it is working to finalize the Citizen Complaint General Order.¹¹⁵

4. OCCR Investigation of Complaints (MOA ¶¶ 86, 96-97)

In the Eighth Quarterly Report, the OIM reported its findings with respect to its review that quarter of investigations performed by OCCR of citizen complaints alleging misconduct on the part of MPD officers. We reported statistics related to the timeliness of the 128 OCCR investigations closed during the period March 1, 2003 through February 29, 2004. The OIM also selected for substantive review a statistical sample of 30 of the OCCR investigations from the group of 128 and performed substantive reviews of the quality of those investigations. In sum, the OIM found that, while OCCR investigations are generally sufficient (85.7%), there is significant room for improvement in both the completeness and timeliness of those investigations.¹¹⁶

In response to the OIM's findings last quarter, OCCR requested that the OIM provide technical assistance regarding observed deficiencies in OCCR's investigations similar to the technical assistance that we provided to MPD with respect to its chain of command investigations.¹¹⁷ The OIM has performed its review in response to OCCR's request for technical assistance and will issue a memorandum to OCCR in the coming quarter.

C. Substantial Compliance Evaluation

We find that the City and MPD are not yet in substantial compliance with MOA paragraph 85, which requires the development of a plan delineating the roles and responsibilities of OCCR and MPD. Although MPD and OCCR executed the original MOU on September 28, 2002 and have been cooperating pursuant to its terms, for many months the parties have been working to finalize a revised MOU that would establish a much more comprehensive definition of the roles and responsibilities of the agencies. That revised MOU is currently under review by DOJ. Also, although compliance with certain areas of the MOU has been quite good in recent quarters, neither MPD nor OCCR has

¹¹⁵ MPD October 2004 Progress Report at 10.

¹¹⁶ OIM Eighth Quarterly Report at 46-49.

¹¹⁷ E-mail from Thomas Sharp to Tommy Beaudreau, dated May 17, 2004.

achieved a consistent compliance rate of 95% or better with the current provisions of the MOU regarding referral of complaints filed with OCCR that fall outside OCCR's jurisdiction, weekly notice to MPD of formal OCCR complaints, the scheduling and attendance of MPD officers at OCCR interviews, and MPD's responses to OCCR document requests.

The OIM reserves until next quarter its evaluation of the City's substantial compliance with MOA paragraph 86, which requires the City to provide OCCR with sufficient qualified staff, funds, and resources to perform its functions under the MOA and District of Columbia law. In the coming quarter, the OIM will supplement its eighth quarter review of the timeliness and quality of OCCR's investigations of allegations of officer misconduct.

The OIM reserves until next quarter its substantial compliance evaluation with respect to MOA paragraph 87, which requires MPD officers to provide their names and identification numbers to any person requesting that information.

The OIM reserves until next quarter its substantial compliance evaluation with respect to MOA paragraphs 88 through 90, which relate to MPD's program for providing the public with information on the process for filing complaints regarding the performance of MPD officers. DOJ approved MPD's communications plan on January 31, 2003, and as discussed above we have observed that MPD has taken many steps to implement that plan.

We find that MPD currently is not in substantial compliance with MOA paragraph 91, which requires that each of MPD's PSAs hold public meetings on at least a semi-annual basis and that such meetings be advertised adequately at least a week in advance. Although many of the PSA community outreach meetings we have monitored have been excellent examples of cooperation between a law enforcement agency and the citizenry consistent with the principles of community policing, the frequency and advertisement of these meetings varies greatly by district and currently is inadequate when considered on a citywide basis.

The OIM reserves until next quarter its evaluation as to MPD's compliance with MOA paragraph 92, which requires MPD to establish various avenues by which citizens may lodge complaints against MPD officers and procedures for handling anonymous and third-party complaints.

The City currently is not in substantial compliance with MOA paragraph 93, which requires the establishment of a citizen complaint hotline operated by OCCR and audited through a tape recording procedure. Although the City has established the hotline, the tape recording-based audit procedure required under paragraph 93 is not yet operational.

MPD is not in compliance with MOA paragraph 94, which requires the development of policies and procedures related to the handling of citizen complaints filed with MPD. MPD has not finalized and obtained DOJ approval of the Citizen Complaint General Order.

The City is in substantial compliance with MOA paragraph 95, which requires that OCCR's offices be located separate from any building occupied by MPD personnel.

The OIM reserves until the coming quarter its substantial compliance evaluation with respect to MOA paragraph 96, which relates to the training of OCCR investigators.

The OIM also reserves until the coming quarter its substantial compliance evaluation with respect to MOA paragraph 97, which relates to OCCR's investigations manual.

D. Recommendations

The OIM recommends that MPD and OCCR continue working with DOJ to finalize the revised MOU. We also recommend that MPD devote attention to scheduling and advertisement of the PSA community outreach meetings across MPD's districts. Although several of the community outreach meetings that we have monitored have been excellent examples of cooperation between law enforcement and the citizenry, the frequency and advertisement of these meetings varies greatly by district. Finally, we recommend that OCCR proceed with the prompt implementation of its recording-based hotline audit procedures so that the OIM can begin monitoring the effectiveness of this system.

IV. Discipline and Non-Disciplinary Action (MOA ¶ 105)

A. Requirements

The MOA, as modified by the MOA Modification, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.¹¹⁸ Specifically, the policy must:

- Prescribe when non-disciplinary action is appropriate;
- Prescribe when district-level discipline or corrective action is appropriate;
- Establish a formal and centralized system for documenting and tracking discipline and corrective action; and
- Develop a procedure for providing written notice to complainants regarding the most significant aspects of the handling of their complaints, including but not limited to disposition.

B. Status and Assessment

1. Disciplinary Policy

On May 19, 2003, MPD submitted its draft Disciplinary Policy to DOJ. The submission of this policy followed a lengthy delay on the part of MPD. As originally negotiated by MPD and DOJ, MPD's Disciplinary General Order was due to be completed by October 11, 2001. On September 30, 2002, as part of a major renegotiation of MOA deadlines, MPD and DOJ revised the due date of this general order to November 22, 2002. On November 22, 2002, MPD notified DOJ that it would not be able to meet the revised deadline and committed to submit the general order by December 31, 2002 -- the end of that quarter. On December 31, 2002, however, MPD notified DOJ that it would not meet that deadline either. MPD stated that the reason for this missed deadline was its desire to engage the FOP in a dialogue regarding the draft order before it is submitted to DOJ.

¹¹⁸ MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

On August 25, 2003, DOJ provided MPD with comments on the draft Disciplinary General Order. DOJ noted that, “[a]lthough the [general order] was not timely submitted pursuant to the renegotiated deadline contained in the parties’ September 30, 2002 Joint Modification to the MOA, we appreciate and commend the efforts of MPD and the local FOP in working collaboratively to resolve their differences and to identify issues for collective bargaining.”¹¹⁹ In its August 25, 2003 letter to MPD, DOJ also noted that the draft Disciplinary General Order “does not specifically ‘establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action’ as required by MOA paragraph 105.”¹²⁰ This quarter, on July 29, 2004, MPD responded to DOJ by explaining that the Disciplinary Process General Order cannot be finalized by MPD until its negotiations with the FOP over disciplinary procedures are complete.¹²¹

2. Disciplinary Systems and Procedures

Last quarter, the OIM conducted a substantial review of MPD’s systems and procedures related to the administration and tracking of disciplinary and training recommendations flowing from the UFRB’s review of use of force cases.¹²² The purpose of this review was to test the extent to which MPD is effective in disciplining officers found responsible for unjustified uses of force and in training officers found to be in need of remedial training to correct identified failures to properly implement MPD policy or employ sound police practices. Where officers are found to have acted outside of MPD policy, to have used unjustified levels of force, or to be in need of remedial training, it is critical that MPD’s disciplinary and training systems effectively and efficiently address these issues to conform officer conduct to the requirements of MPD policy and the MOA.

Although MPD has established the UFRB as a body for the review of investigations involving uses of force, as reported above, we have identified significant deficiencies on the part of the Board in fulfilling its role as a “quality control mechanism” by conducting comprehensive

¹¹⁹ Letter from Tammie Gregg to Captain Matthew Klein regarding “Disciplinary General Order” (August 25, 2003).

¹²⁰ *Id.*

¹²¹ Letter from Maureen O’Connell to Tammie Gregg regarding “MOA Paragraph 105, Disciplinary Process” (July 29, 2004).

¹²² OIM Ninth Quarterly Report at 50-55.

reviews of each use of force incident and by identifying “patterns/problems” suggesting the need for improved training or policy modifications.¹²³ Last quarter, we found that, where the UFRB recommended discipline or remedial training, MPD had inadequate internal control mechanisms in place to ensure that the recommended discipline or corrective action was administered. Finally, we also found MPD lacked a centralized and formal system for tracking discipline and remedial training.¹²⁴

Prior to the close of last quarter, the OIM held two conference calls with representatives from the UFRB, the Department Discipline Review Office (“DDRO”), the Institute of Police Science (“IPS”), and MPD command staff to discuss the preliminary findings of our review of MPD’s disciplinary tracking systems. We found MPD to be responsive to the problems we have identified with respect to its tracking and administration of discipline and remedial training in use of force cases. In fact, MPD reported that it has taken steps to follow up on the UFRB’s recommendations for remedial training from 2003.¹²⁵

C. Substantial Compliance Evaluation

We did not monitor MPD’s disciplinary systems and procedures this quarter in order to allow it a reasonable period during which to respond to the findings discussed with the parties last quarter and presented in our Ninth Quarterly Report. In the coming quarter, the OIM will continue its review of MPD’s disciplinary tracking systems, and in our next quarterly report we will make our substantial compliance evaluation with respect to MOA paragraph 105.

D. Recommendations

Although we did not monitor MPD’s disciplinary systems and procedures this quarter, MPD has been responsive to the problems that we have identified with respect to the tracking and administration of discipline and remedial training in use of force cases. In the coming quarter, we will provide MPD additional technical assistance in this area, including our suggestions for the improvement of the operations of the UFRB.

¹²³ MOA at ¶ 67.

¹²⁴ MOA at ¶ 105.

¹²⁵ MPD July 2004 Progress Report at 25-26.

V. Personnel Performance Management System (MOA ¶¶ 106-117)

A. Requirements

Under the MOA, MPD is committed to developing and implementing a computer database that will facilitate the management and supervision of MPD personnel. The computer database, referred to in the MOA as the Personnel Performance Management System, or PPMS, is intended to:

- Promote civil rights integrity and best professional police practices;
- Manage the risks of police misconduct;
- Evaluate and audit the performance of MPD officers, units, and groups;
- Promote accountability and proactive management; and
- Identify, manage, and control at-risk officers, conduct, and situations.

In addition to describing the objectives PPMS shall achieve, the MOA specifies the information that must be captured to ensure that PPMS achieves these objectives. This information includes the following:

- All uses of force that must be reported on MPD's UFIR forms or that are the subject of an MPD criminal or administrative investigation;
- All police canine deployments;
- All officer-involved shootings and firearms discharges, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OCCR;

- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
 - Educational history,
 - Military service and discharge status,
 - Assignment and rank history,
 - Training history,
 - All management and supervisory actions taken pursuant to review of PPMS information, and
 - All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

The MOA also requires MPD to develop, subject to DOJ approval, a "Data Input Plan" to facilitate the entry of historical data into PPMS, as well as detailed requirements for how the information -- historical and contemporary -- must be put into the system and the ways in which it must be retrievable. Furthermore, the MOA requires MPD to develop a detailed protocol for the use of the computerized management system.

While PPMS is under development, MPD is required to utilize existing information and databases to achieve the purposes established for PPMS. In addition, OPR is charged with the responsibility of operating PPMS, as well as for developing and overseeing MPD-wide risk assessments.

Related to, but separate from, the development of PPMS, MPD is required to enhance its new Performance Evaluation System. This enhancement must ensure that each sworn MPD employee's performance be evaluated, at a minimum, according to certain specified criteria.

These criteria include civil rights integrity and community policing; adherence to law, including civil rights laws and laws designed to protect the rights of suspects; and the performance of supervisors in identifying at-risk behavior among their subordinates.

B. Status and Assessment

1. PPMS

Under the MOA, a Request for Proposal (“RFP”) related to PPMS originally was scheduled to be issued by August 13, 2001, with a contractor to be selected by March 13, 2002, and a beta version of the system to be ready for testing by March 13, 2003. It became clear relatively early on that MPD would not be able to meet those deadlines. On September 30, 2003, DOJ and MPD agreed to Joint Modification No. 2 to the MOA, which discharged both MPD and the City from breach status with respect to the PPMS-related provisions of the MOA and established a revised timetable for PPMS development that provided for a beta version of PPMS to be available by June 25, 2004 and full implementation of PPMS to be complete by February 25, 2005.¹²⁶

In our Eighth Quarterly Report, we reported that MPD suffered a significant setback with respect to the development of PPMS.¹²⁷ By teleconference on March 8, 2004, MPD notified DOJ that a loan for PPMS development that MPD expected to receive from the City’s Office of the Chief Technology Officer would not be forthcoming until MPD could establish that it would receive a sufficient budgetary allocation in fiscal year 2005 to re-pay the loan.¹²⁸ Because the City’s budget for fiscal year 2005 had not yet been approved and funding allocations with respect to PPMS had not yet been made, MPD was forced to suspend the PPMS development project when existing funds were exhausted as of the end of March 2004.¹²⁹

¹²⁶ Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement (September 30, 2003).

¹²⁷ OIM Eighth Quarterly Report at 54-55.

¹²⁸ Letter from Captain Matthew Klein to Chief Shanetta Cutlar (March 15, 2004).

¹²⁹ On two occasions, DOJ expressed in writing its concerns relating to the possibility that MPD would experience a funding shortfall that would impact the development of PPMS. Letter from Shanetta Y. Brown Cutlar to Chief Charles Ramsey (March 26, 2003); Letter from Tammie M. Gregg to Captain Matthew Klein (August 21, 2003).

On June 14, 2004, MPD formally notified DOJ that it would be unable to meet the deadlines agreed to under Joint Modification No. 2 to the MOA and requested a third modification to the MOA to establish a revised timetable for PPMS development.¹³⁰ On June 18, 2004, MPD forwarded a proposed revised schedule for PPMS development that provides for the full implementation of PPMS by June 7, 2006.¹³¹ Also, on June 8, 2004, MPD received the agreement of IBM/CRISNet, the contractor MPD selected for the PPMS development project, to extend its proposal related to PPMS until January 31, 2005.

During this quarter, MPD and DOJ have held several discussions regarding MPD's proposed new timeline for PPMS development. In response to inquiries from DOJ, MPD submitted additional information supporting its proposed revised schedule for PPMS development. Despite the parties' significant efforts to negotiate a third modification to the MOA prior to the end of this quarter, DOJ notified MPD that, as of September 30, 2004, DOJ could not yet agree to a set of revised dates for PPMS development, but that it is confident that an agreement can be reached in the near future.¹³²

On August 29, 2003, MPD submitted a plan for compliance with MOA paragraphs 107, 109, and 110, which concern the contents and functionality of PPMS. On September 30, 2003, DOJ provided MPD with suggestions regarding MPD's plan for compliance with MOA paragraphs 107 and 109. On August 31, 2004, MPD provided DOJ with its "Joint Application Development Report and Consolidated Fit Gap Analysis Document" that summarizes MPD's joint application development ("JAD") sessions and provides a report describing MPD's plans to ensure PPMS is customized to satisfy the MOA's requirements.¹³³ MPD feels this document best outlines MPD's plans for developing a PPMS that complies with the MOA.¹³⁴

¹³⁰ Letter from Maureen O'Connell to Tammie Gregg (June 14, 2004).

¹³¹ Letter from Maureen O'Connell to Tammie Gregg (June 18, 2004).

¹³² Letter from Shanetta Y. Cutlar to Chief Ramsey regarding "Personnel Performance Management System" (September 30, 2004).

¹³³ MPD's JAD sessions are discussed in the OIM's Seventh Quarterly Report at 43-44.

¹³⁴ MPD October 2004 Progress Report at 32.

On November 18, 2003, MPD submitted a draft PPMS Protocol to DOJ for technical assistance review.¹³⁵ On September 30, 2004, MPD provided DOJ with an update regarding its efforts with respect to the development of the PPMS Protocol.¹³⁶

At the request of MPD, on December 3, 2003, DOJ extended the due date of MPD's plan for compliance with MOA paragraph 113, which relates to the maintenance of officer information, from November 14, 2003 to January 5, 2004. MPD submitted its plan for compliance with MOA paragraph 113 on January 5, 2004, and DOJ provided comments to MPD's draft plan on May 6, 2004.¹³⁷ MPD currently is reviewing DOJ's comments.

On August 19, 2004, MPD submitted to DOJ a revised plan for compliance with MOA paragraph 117, which assigns responsibility for MPD-wide risk assessments and overseeing the implementation of the PPMS Protocol. DOJ provided comments to MPD's revised plan for compliance with paragraph 117, which MPD is currently reviewing.¹³⁸

2. Performance Evaluation System (MOA ¶ 118)

On May 2, 2003, DOJ provided comments on MPD's Enhanced Performance Evaluation System Protocol. On September 30, 2003, MPD provided DOJ with a "status report" concerning DOJ's comments, to which DOJ responded on October 6, 2003. On March 5, 2004, MPD provided DOJ with another update regarding its efforts to revise the Performance Evaluation System, which identified the primary outstanding tasks related to the Performance Evaluation System as (1) staffing of the Performance Management System pursuant to the Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant General Order and (2) revision of the manuals containing officer and sergeant performance evaluation standards.¹³⁹

This quarter, on July 1, 2004, MPD submitted revised materials related to the Performance Evaluation System for DOJ's review. On

¹³⁵ MOA at ¶¶ 111, 112, and 114.c.

¹³⁶ MPD October 2004 Progress Report at 32.

¹³⁷ MPD July 2004 Progress Report at 34.

¹³⁸ MPD October 2004 Progress Report at 32-33.

¹³⁹ *Id.* at 34.

September 10, 2004, MPD requested that DOJ expedite its review of these materials in order to have the revised standards available for officer and sergeant performance evaluations during this cycle. DOJ is attempting to accommodate MPD's request and, on September 24, 2004, sought additional information from MPD regarding its Performance Management System to facilitate DOJ's review. MPD responded to DOJ's request for information on September 29, 2004, and DOJ's review of the Performance Evaluation System materials is ongoing.¹⁴⁰

C. Substantial Compliance Evaluation

With the exception of MOA paragraphs 114.a and 114.b, which relate to the issuance of an RFP for PPMS development and the selection of a contractor for the project, MPD and the City are not in substantial compliance with the PPMS development and implementation requirements of paragraphs 107 through 117 of the MOA.¹⁴¹ Although MPD has devoted significant effort to preparing plans for PPMS development and implementation -- including the Joint Application Development Report and Consolidated Fit Gap Analysis Document, draft PPMS Protocol¹⁴², and plans for compliance with MOA paragraphs 113 and 117 -- MPD has not yet obtained DOJ approval of these materials.

Moreover, MPD and the City have fallen substantially behind in the development of the PPMS due to the funding shortfall they are currently experiencing. The parties have not yet agreed upon a third modification to the MOA establishing a revised timetable for PPMS development and implementation.

MPD is not in substantial compliance with MOA paragraph 118 concerning its Performance Evaluation System. MPD has not yet obtained DOJ approval of its draft Enhanced Performance Evaluation System Protocol.

¹⁴⁰ *Id.* at 34-35.

¹⁴¹ Paragraph 106 of the MOA contains no substantive provisions.

¹⁴² MPD's Joint Application Development Report and Consolidated Fit Gap Analysis Document (1) summarizes the 14 joint application development workshops held by MPD in the fall of 2003, which were collaborative meetings with anticipated PPMS end-users to identify system requirements, and (2) describes MPD's plans to ensure that PPMS is customized to satisfy MPD's and the MOA's requirements.

D. Recommendations

The OIM recommends that MPD continue working with DOJ to negotiate a third modification to the MOA that establishes a new timeline for PPMS. We also recommend that MPD continue working with DOJ to finalize the materials related to its Performance Evaluation System.

VI. Training (MOA ¶¶ 119-148)

A. Requirements

The training provisions in the MOA specifically address management oversight, curriculum development, instructor training, firearms training, and canine training.

1. Management Oversight

Regarding management oversight, MPD is required to centrally coordinate the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.¹⁴³ MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it relates to the terms of the MOA, including:

- Ensuring the quality of all use of force training across MPD;
- Developing and implementing appropriate use of force training curricula;
- Selecting and training MPD trainers;
- Developing and implementing all in-service training and roll call curricula;
- Developing tools to evaluate all training;
- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;¹⁴⁴ and

¹⁴³ To ensure compliance with applicable law, training materials are to be reviewed by MPD's General Counsel or some other appropriate legal advisor. MOA at ¶ 120.

¹⁴⁴ The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

In addition, MPD's Curriculum Development Specialist ("CDS") is required to review, revise, and implement, subject to DOJ approval, all use of force-related training material to ensure that the materials are consistent (as to content and format), properly to incorporate applicable law and policy into such training materials, to incorporate specific training objectives and suggestions on how most effectively to present use of force training materials, and to determine whether training aids are being used appropriately. The CDS' responsibilities also extend to reviewing, at least on a quarterly basis, all force-related training for quality assurance and consistency. More generally, MPD is required to keep its updated training materials in a central, commonly accessible file and to maintain updated and complete training records as to every MPD officer.

2. Curriculum

The MOA prescribes various features of MPD's training programs that address the content of MPD training. First, all force-related training must incorporate critical thinking and decision-making skills and must include training in cultural diversity and community policing. More specifically with respect to use of force training, MPD's use of force training must contain training on the following elements:

- MPD's use of force continuum;
- MPD's use of force reporting requirements;
- The Fourth Amendment and other constitutional requirements applicable to police officers; and
- Examples of use of force and ethical dilemmas, with a preference for interactive exercises for resolving them.

Training on these topics should involve concrete use of force experiences and examples, and dialogue on these issues with trainees is to be encouraged.

Supervisory and leadership training must focus not only on these elements, but also on command accountability and responsibility, interpersonal skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity.

Priority in supervisory and leadership training must be accorded to MPD's new policies on use of force, use of canines, the UFRB, and the revised policies and practices relating to administrative misconduct investigations. Supervisory and leadership training on these issues is required, with re-training to take place on an annual basis.

The training provisions of the MOA specifically address two aspects of existing MPD training -- Role Play and Range 2000 training. Training materials relating to these aspects of MPD must be reviewed to ensure their consistency with law and MPD policy. In addition to other specific requirements, the MOA requires that a standardized curriculum, lesson plans, and instructional guidelines for these aspects of MPD training be developed. MPD is required to videotape student officers during Role Play training exercises to better focus discussions during the critique portion of the course.

Finally, the MOA sets forth specific requirements regarding training with respect to aspects of the MOA itself. MPD is required to distribute copies of the MOA to all officers and employees and explain its terms. Further, as MPD adopts new policies and procedures mandated by the MOA, it must incorporate them into in-service and new recruit training.

3. Instructors

The MOA establishes various requirements relating to the training and competence of instructors. First, MPD was required to conduct an assessment to determine the sufficiency, competence, and standards for evaluating training personnel and, on the basis of that assessment, to develop a plan for addressing training instructor needs to DOJ for its approval.

Second, subject to DOJ's approval, MPD was required to develop and implement eligibility and selection criteria for all training positions, including Academy, Field Training, and formal training. These criteria are equally applicable to existing personnel in training positions and to candidates for training positions. MPD also was required to develop an instructor certification program relating to the competency of its instructors. Further, MPD was required to create and implement a formal instructor training course and to provide regular retraining on subjects including adult learning skills, leadership, and teaching and evaluation, among others. Consistent with its focus, the MOA specifically requires MPD to ensure adequate management supervision of

use of force training instructors to ensure the training they provide is consistent with MPD policy, law, and proper police practices.

4. Firearms Training

The MOA requires mandatory semi-annual firearms training and re-qualification, including the successful completion of the Range 2000 and Role Play courses. MPD must revoke the police powers of all officers who do not properly re-qualify. MPD was required to create and implement, subject to DOJ approval, a checklist containing prescribed elements that must be completed for each student officer by a firearms instructor. In addition, firearms training materials must be reviewed and integrated into an overall training curriculum. Finally, MPD must, at least every three months, consult with Glock, the manufacturer of MPD officer service weapons, to obtain the most current information on cleaning, maintenance, and other factors that may affect the proper use of the weapon.

5. Canine Training

The MOA requires MPD to develop and implement a comprehensive canine training curriculum, which includes the identification of the mission, goals, and objectives of the Canine Unit. MPD was required to have all its canines certified in the “new handler-controlled alert methodology” and to ensure that the canines are re-certified on an annual basis and receive refresher training. MPD must monitor and oversee its canine handlers to ensure they are capable of implementing the canine policies that have been adopted by MPD.

B. Status and Assessment

1. Use of Force Training

Our initial review of MPD’s in-service training programs on use of force found numerous shortcomings in the program that left officers with incomplete or skewed understandings of MPD’s new use of force policies and UFIR requirements.¹⁴⁵ Since that time, we have observed continued and significant improvement in MPD’s training program.

The OIM frequently monitors MPD firearms training and pistol re-certification sessions, which include classroom instruction regarding

¹⁴⁵ OIM Third Quarterly Report at 57-60.

the use of force continuum, the Use of Force General Order, the UFIR, weapon safety and security, authorized equipment, basic shooting techniques, role play, pistol re-certification on the firing range, and exercises on the Range 2000 course. We have consistently found MPD's firearms instructors to be both knowledgeable and professional.¹⁴⁶ The curriculum is consistent with the MOA, and MPD's firearms and use of force instructors make effective use of adult learning principles and examples based on real life experiences.

The OIM recently visited the Federal Law Enforcement Training Center ("FLETC") facility in Cheltenham, Maryland where MPD now conducts its in-service firearms training and pistol re-certification programs. We found the FLETC indoor firing range to be an impressive, state-of-the-art facility that is a significant upgrade over the prior facility used by MPD for firearms-related training.¹⁴⁷ At the time of our visit, however, MPD did not have the capacity to videotape the role play component of firearms and use of force in-service training.¹⁴⁸ The MPD instructors acknowledged this deficiency and reported that MPD was working to develop a solution.

As discussed above, last quarter we monitored two in-service firearms training sessions to evaluate, among other things, the extent to which MPD has enhanced its use of force continuum training with respect to the use of OC spray. We found that MPD did not appear to have placed any additional emphasis on training with respect to the use of OC spray, as we recommended in the Sixth Quarterly Report.¹⁴⁹ We note, however, that this quarter, on September 30, 2004, MPD obtained DOJ's final approval for the OC Spray Lesson Plan.¹⁵⁰ In the coming quarter, we intend to observe additional in-service use of force training to evaluate MPD's implementation of the approved OC Spray Lesson Plan.

We also have monitored MPD's in-service training related to the use of the ASP baton. The class covered the use of force continuum, proper ASP control, striking techniques, and acceptable striking areas of

¹⁴⁶ See, e.g., OIM Seventh Quarterly Report at 48-49.

¹⁴⁷ OIM Ninth Quarterly Report at 62-63.

¹⁴⁸ MOA at ¶ 132.

¹⁴⁹ OIM Ninth Quarterly Report at 11-13.

¹⁵⁰ MPD October 2004 Progress Report at 26.

the body. Again, we found the training appropriate and the instructor to be knowledgeable and to have engaged the class effectively.¹⁵¹

2. Canine Training

MPD's canine teams are scheduled to undergo in-service training on a six-week cycle, which involves one day of in-service training for every canine team every six weeks. The OIM has found that MPD's attendance and completion rates for canine in-service training, given the availability of MPD Canine Unit members and canines, were quite good.¹⁵²

The OIM monitored MPD's basic canine training courses conducted at MPD's IPS facility. Students were both new and experienced handlers; and the training sessions include on-lead tracking exercises, obedience training, agility tests, search exercises, and a "take down" test to evaluate the animal's ability to respond to hand signals and to remain under control while off lead and faced with a fleeing suspect.¹⁵³

We have reviewed the written examination that the Canine Unit implemented within the past year to test canine handlers' knowledge of the handler-controlled alert methodology and MPD's policies with respect to canine use and deployment approval. All current handlers have taken and passed this examination, and it is administered to all new handlers during the basic handler certification training process. The Canine Unit supervisor reports that the canine instructor reviews with the handler all questions on the examination that the handler answered incorrectly in an effort to ensure that the handler clearly understands MPD policy.¹⁵⁴

The OIM also conducted a review recently of the Canine Unit's instructor certification process. The process for obtaining certification as a canine instructor takes approximately two years, and a qualified applicant is required to have been a canine handler for at least five years. Instructor candidates must conduct at least six re-certification training sessions under the direct supervision of the Canine Unit supervisor and deliver a full basic canine certification training that results in 70% of the

¹⁵¹ OIM Seventh Quarterly Report at 48-49.

¹⁵² OIM Eighth Quarterly Report at 60-61

¹⁵³ OIM Seventh Quarterly report at 49.

¹⁵⁴ *Id.*

handlers becoming certified. MPD officers who are candidates to become canine instructors are evaluated by canine experts from MPD and other policing agencies, including the United States Park Police and the United States Secret Service. Several Canine Unit members currently are undergoing the instructor certification process, which they are expected to complete within the next twelve months.

Finally, the OIM has monitored MPD's compliance with the MOA's "professionally-bred" requirement¹⁵⁵ by reviewing the "personnel" file for each of MPD's canines, which contains information on the date and place the canine was purchased, the canine's medical records, and other documentation. We also reviewed the invoices related to MPD's most recent canine purchases. On September 21, 2003, MPD purchased eleven canines from Orchard Knoll Kennels located in Angier, North Carolina, which is a reputable supplier of professionally bred canines.¹⁵⁶

In the coming quarter, we expect to be able to observe the training of several new MPD canines and handlers. This training was originally scheduled to begin this quarter, but was postponed. We anticipate that these sessions will offer the OIM an extremely valuable opportunity to further evaluate MPD's canine training program.

3. Curriculum and Lesson Plans

The MOA provides for DOJ review and approval of all force-related training material, including curriculum and lesson plans.¹⁵⁷ MPD originally submitted the eleven lesson plans that comprise its use of force curriculum to DOJ on July 24, 2002. DOJ provided MPD with comments on certain of these lesson plans on November 25, 2002, and MPD submitted revised lesson plans to DOJ on March 9, 2003. DOJ provided additional comments on MPD's use of force lesson plans on May 16, 2003, and MPD returned revised drafts of certain of the use of force-related lesson plans to DOJ on February 23, 2004. Six of MPD's use of force lesson plans were approved by DOJ prior to the beginning of this quarter.

This quarter, DOJ approved MPD's OC Spray and Verbal Judo Lesson Plans. The three remaining force-related lesson plans that have

¹⁵⁵ MOA at ¶ 146.

¹⁵⁶ OIM Eighth Quarterly Report at 61.

¹⁵⁷ MOA at ¶ 122.

not received final DOJ approval are the Officer Street Survival, Pistol Qualification, and Use of Force Continuum (with Manual) Lesson Plans, and DOJ provided comments on these three outstanding lesson plans on September 30, 2004. The status of MPD's force-related plans is reflected in the chart below.¹⁵⁸

Status of MPD Use of Force Lesson Plans

ASP Tactical Baton Training Program	Approved by DOJ 09-30-03
Close Quarter Combat	Approved by DOJ 09-30-03
Controlled F.O.R.C.E.	Approved by DOJ 09-30-03
Ground Fighting	Approved by DOJ 09-30-03
Handcuffing	Approved by DOJ 09-30-03
Krav/Maga	Approved by DOJ 09-30-03
OC Spray	Approved by DOJ 09-30-04
Officer Street Survival	Pending DOJ Approval
Pistol Qualification	Pending DOJ Approval
Use of Force Continuum (with Manual)	Pending DOJ Approval
Verbal Judo	Approved by DOJ 09-24-04

MPD's IPS also has developed 16 lesson plans to address the requirements of MOA paragraphs 84, 98, and 129. Paragraphs 84 and 98 establish requirements relating to the training of MPD investigators in connection with the performance of MPD's internal use of force and misconduct investigations, and paragraph 129 establishes training requirements for all MPD supervisors -- officers with the rank of sergeant and above. During this quarter, MPD submitted the following six lesson plans for DOJ approval: Arrest, Custody, and Restrain Procedures; Interview and Interrogation; Cultural Diversity and Sensitivity Awareness; Use of Force Continuum (with Manual);¹⁵⁹ Use of Force Incident Report; and Use of Force Review Board Lesson Plans. The status of MPD's 16 lesson plans comprising MPD's curriculum for the in-service training of supervisors and investigators is summarized in the below chart.¹⁶⁰

¹⁵⁸ MPD October 2004 Progress Report at 26.

¹⁵⁹ This lesson plan also was submitted to DOJ as one of the 11 lesson plans that comprise MPD's use of force curriculum.

¹⁶⁰ MPD October 2004 Progress Report at 27.

Status of MPD In-Service Supervisor and Investigator Lesson Plans

Administrative Misconduct Investigation Policy and Procedures Using the Preponderance of Evidence Standard	Pending DOJ approval of the Chain of Command Misconduct Investigations General Order and Chain of Command Investigations Manual
Arrest, Custody, and Restraint Procedures	Approved by DOJ 09-30-04
Bias-Related Hate Crimes	Approved by DOJ 05-16-03
Canine Policies and Procedures	Pending DOJ Approval of Canine Teams General Order
Command Accountability	Approved by DOJ 11-25-02
Communication and Interpersonal Relationship Skills	Approved by DOJ 11-25-02
Crime Scene Preservation	Approved by DOJ 05-16-03
Cultural Diversity and Sensitivity Awareness	Pending DOJ Approval
Defensive Tactics	Approved by DOJ 05-16-03
Ethics, Integrity, and Professionalism	Approved by DOJ 11-25-02
Interview and Interrogation	Pending DOJ Approval
Theories of Motivation and Leadership	Approved by DOJ 11-25-02
Use of Force and Use of Force Continuum (with Manual)	Pending DOJ Approval
Use of Force Incident Report Form	Pending DOJ Approval of Revised UFIR
Use of Force Review Board	Approved by DOJ 09-30-04
Verbal Judo Re-certification	Approved by DOJ 11-25-02

On December 31, 2003, MPD issued its Semi-Annual Use of Force Curriculum Review, which was prepared by the CDS.¹⁶¹ On March 30, 2004, DOJ returned comments on the review, which raised concerns regarding the lack of detail in the review and requested that OIM review MPD's semi-annual use of force reviews in a future quarterly report.¹⁶² Another semi-annual review was due to DOJ on June 30, 2004, but MPD requested a delay in the submission of that report.¹⁶³

On July 30, 2004, MPD submitted to DOJ its most recent Semi-Annual Use of Force Curriculum Review prepared by the CDS at

¹⁶¹ MOA at ¶ 119.

¹⁶² MPD October 2004 Progress Report at 29.

¹⁶³ *Id.*

IPS. On September 24, 2004, DOJ responded that it is “pleased to note that the July 30, 2004 Compliance Memo is a significant improvement over the last document, and we commend MPD on the obvious effort that went into this version.”¹⁶⁴ We join in DOJ’s assessment. Our review this quarter of the July 30, 2004 Semi-Annual Use of Force Curriculum Review found that the report is detailed and provides clear assessments of the lesson plans and courses reviewed by the CDS.¹⁶⁵

4. Instructors

MPD submitted a draft of its Enhanced Field Training Officer Program Protocol to DOJ on December 6, 2002.¹⁶⁶ Although DOJ provided comments to the draft Protocol on September 30, 2003, MPD has experienced significant delays revising the Protocol in response to DOJ’s comments. MPD submitted its revised Enhanced Field Training Officer Program Protocol to DOJ this quarter on September 27, 2004. The Protocol has yet to be approved by DOJ.¹⁶⁷

During the seventh quarter, the OIM performed a detailed review of MPD’s FTO program. We found that significant improvement in the FTO program is necessary, including finalization of the Enhanced Field Training Officer Program Protocol and establishment and application of formal selection criteria for FTOs.¹⁶⁸ In particular, we found that the existing protocol being used by FTOs in the field training program to train Probationary Police Officers (“PPOs”) was disjointed and out of date.

We also found that MPD does not appear to have established selection criteria for FTOs as required under paragraphs 121.f and 135 of the MOA and that master patrol officers (“MPOs”) designated to serve as FTOs generally are selected based on interviews conducted and controlled at the district level. Accordingly, we concluded that, without formal criteria governing the selection of FTOs, the qualifications of

¹⁶⁴ Letter from Tammie M. Gregg to Captain Matthew Klein regarding “Semi-Annual Review of Use of Force Curriculum, MOA Paragraphs 119, 122 and 142” (September 24, 2004).

¹⁶⁵ It was not clear based on our review that MPD’s General Counsel reviewed each of the final lesson plans as required under paragraphs 120 and 132.a of the MOA. We will evaluate MPD’s compliance with this requirement of the MOA.

¹⁶⁶ MOA at ¶ 121.f.

¹⁶⁷ MPD October 2004 Progress Report at 28.

¹⁶⁸ OIM Seventh Quarterly Report at 50-51.

personnel selected to be FTOs risked significant variation by district and would be inconsistent with the substantive requirements of paragraph 135 of the MOA.¹⁶⁹ Last quarter, we reported that MPD had not made any significant progress with respect to its FTO program and strongly encouraged MPD to finalize the Enhanced Field Training Officer Program Protocol and to develop and apply formal criteria for the selection of FTOs as required under paragraphs 121.f and 135 of the MOA.¹⁷⁰

This quarter, two of the OIM's police practices experts met with MPD's Assistant Chief of Human Services and with representatives from IPS to discuss various specific deficiencies in MPD's FTO program and to recommend remedies. In response to the issues discussed during the meeting, the Director of IPS identified several steps intended to improve coordination between IPS and MPD officers who currently serve as Master Patrol Officers ("MPOs") primarily responsible for the field training and supervision of PPOs pending DOJ's approval of the Enhanced Field Training Officer Program Protocol. Specifically, MPD intends to implement the following measures to enhance its current FTO program:

- Include MPOs in the development of Daily Roll Call training.
- Include MPOs in the development and implementation of the 2005 In-Service Program.
- Offer enhanced instructor training to MPOs.
- Allow MPOs to serve as adjunct faculty at IPS.
- Provide limited first line supervisor training to MPOs.
- Explore the implementation of the Automated, Daily, Observation Reports and Evaluation ("A.D.O.R.E.") software

¹⁶⁹ Paragraph 135 of the MOA requires that the FTO selection criteria "address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity."

¹⁷⁰ OIM Ninth Quarterly Report at 64.

program for the citywide monitoring of field training activity.¹⁷¹

While these efforts to improve MPD's current FTO program are noteworthy, we are concerned about MPD's significant delay in implementing an enhanced FTO program that conforms to the requirements of the MOA. MPD's failure to implement a centralized FTO program to train and monitor PPOs is a significant problem for MPD. Approximately 153 recruits and lateral officers completed basic training by the end of our seventh quarter of monitoring, most of whom now have entered the field as PPOs. Approximately 184 new recruits and lateral officers will enter field training next quarter. Every one of the 20 PPO files we reviewed this quarter lacked sufficient information regarding the individual PPO's field performance. Since the effective date of the MOA, however, MPD has not removed a single PPO from service for failing to successfully complete the FTO program.

On December 31, 2002, MPD advised DOJ that IPS had selected the State of Maryland Police and Corrections Training Commission ("MPCTC") Enhanced Instructor Certification Course to train MPD police instructors. On September 30, 2003, DOJ notified MPD that it was requesting that the OIM observe and evaluate the MPCTC instructor training program.

During the eighth quarter of our monitoring, the OIM completed its review of the MPCTC instructor training program by conducting interviews with IPS staff and reviewing MPCTC's program curriculum and lesson plans.¹⁷² We found that the MPCTC's Enhanced Instructor Certification Course is a comprehensive instructor training program that is divided into sixteen segments,¹⁷³ which are covered in two training phases. Phase I of MPCTC's instructor training program lasts seven days, during which time students receive instruction on adult learning methodology, curriculum and lesson plan development, and teaching methods. Phase II of the program involves a professional internship

¹⁷¹ MPD October 2004 Progress Report at 28.

¹⁷² OIM Eighth Quarterly Report at 63-64.

¹⁷³ These segments include: Role of the Instructor, Principles of Adult Learning, Adult Learning Styles, Objectives, Instructional Methods I, Facilitation of Discussion, Lesson Plans, Communication/Presentation, Coaching, Instructional Methods II, Training Aids, Assess Group/Individual Learning, Classroom Control Issues, and Evaluation Methods.

during which students are required to prepare actual lesson plans, which are reviewed by MPCTC instructors, and conduct 36 hours of supervised instruction.

The MPCTC program is comprehensive and comports with paragraphs 136 and 137 of the MOA. As discussed in the OIM's Eighth Quarterly Report, we found that MPD's use of the MPCTC program is sufficient to comply with these requirements and that instructors who have successfully completed this program should be eligible to be certified as qualified instructors under the MOA.

C. Substantial Compliance Evaluation

MPD is in substantial compliance with MOA paragraph 119, which requires MPD to perform semi-annual reviews of all use of force training components to ensure quality assurance, consistency, and compliance with applicable law and MPD policy. The OIM finds that the CDS's most recent Semi-Annual Use of Force Curriculum Review, dated July 30, 2004, is a significant improvement over MPD's prior semi-annual review and contains substantial detail and clear assessments of the lesson plans reviewed.

The OIM reserves until the coming quarter its evaluation of MPD's compliance with MOA paragraph 120, which requires MPD's General Counsel to review all MPD training materials.

The OIM reserves until next quarter its evaluations with respect to MPD's compliance with MOA paragraphs 121.a, 121.e, 121.g, and 123, which relate to Director of Training and CDS oversight of the quality of all use of force training, establishment of procedures for evaluating all training, and the performance of regular needs assessments related to use of force training. The OIM's monitoring in these areas is ongoing.

MPD is not in substantial compliance with MOA paragraphs 121.b and 122, which relate to the development and implementation of a use of force training curriculum. MPD has not yet obtained DOJ approval for 3 of its 11 use of force-related lesson plans.

MPD is not in substantial compliance with MOA paragraphs 121.c and 121.f, which establish standards related to MPD's FTO program. MPD has not yet obtained DOJ approval of the Enhanced Field Training Officer Program Protocol, and there are currently significant deficiencies in MPD's FTO program for PPOs.

MPD is not in substantial compliance with MOA paragraphs 84, 98, 121.d, and 129 concerning the development and implementation of all in-service training and roll call curricula, including training programs for MPD supervisors and investigators. MPD has not obtained DOJ approval for 6 of its 16 in-service training lesson plans, not including use of force-related lesson plans.

The OIM reserves until next quarter its evaluation with respect to MPD's substantial compliance with the requirements of MOA paragraphs 124 and 125, which relate to the maintenance of MPD's lessons plans, training records, and other training materials. These areas are included within the OIM's ongoing review of MPD's disciplinary systems, discussed above in Section IV.B.

MPD is not in substantial compliance with MOA paragraphs 126 and 127, which relate to MPD's use of force training curriculum. MPD has not yet obtained DOJ approval for all elements of its use of force training curriculum.

MPD is not in substantial compliance with MOA paragraph 128 concerning the training of MPD recruits, officers, supervisors, and managers in cultural diversity and community policing. MPD has not obtained DOJ approval of its Cultural Diversity and Sensitivity Awareness Lesson Plan.

MPD is in substantial compliance with MOA paragraphs 130 and 131, which require that MPD training instructors engage students in meaningful dialogue, use "real life" experiences in use of force training, and conduct use of force training in an efficient and productive manner. We have consistently found MPD's use of force instructors to be knowledgeable, professional, and engaging and to make effective use of pedagogical techniques such as using "real life" situations to illustrate principles related to the use of force.

The OIM reserves until next quarter its substantial compliance evaluation with respect to the requirements related to role play and the Range 2000 course contained in MOA paragraphs 132.a through 132.c. In our Ninth Quarterly Report, we noted that, at the time of our monitoring during that quarter, MPD did not have the capacity to videotape the role play component of firearms and use of force in-service training, and we stated that we would revisit this area.¹⁷⁴ The OIM will

¹⁷⁴ OIM Ninth quarterly Report at 63.

continue monitoring with respect to role play and Range 2000 in the coming quarter.

The OIM reserves until next quarter its substantial compliance evaluation with respect to MOA paragraph 133, which requires distribution and explanation of the terms of the MOA to all MPD officers and employees and timely updates to in-service training.

MPD is not in substantial compliance with MOA paragraphs 134 and 135, which require the development of a DOJ plan for addressing the needs of training instructors and the development and implementation of eligibility and selection criteria for all academy, field training, and formal training (other than roll call) positions. MPD has not obtained DOJ approval for or implemented these required items.

MPD is in compliance with MOA paragraphs 136 and 137, which relate to the establishment of an instructor training and certification program. MPD has selected the MPCTC to train MPD's police instructors. We have found the MPCTC program to be comprehensive and to satisfy the requirements of MOA paragraphs 136 and 137.

MPD is not currently in compliance with MOA paragraphs 138 and 139, which require MPD to exercise adequate management supervision over its training instructors to ensure that MPD's training is consistent with MPD policy, the law, and proper police practices and that the training is conducted in accordance with approved lesson plans. Although we have consistently found MPD's instructors to be knowledgeable and professional, MPD has not yet obtained DOJ approval of all of the use of force-related lesson plans comprising its training curriculum, and therefore MPD cannot be found to have satisfied these provisions at this time.

The OIM reserves until next quarter its substantial compliance evaluations with respect to MOA paragraphs 140 through 144, which relate to MPD's firearms training program.

MPD is not currently in compliance with MOA paragraphs 145, 147, and 148, which require the development and implementation of a comprehensive canine training curriculum and lesson plans, assurance that MPD handlers are capable of implementing MPD's canine policy, and certification of MPD's canine instructors. MPD has not yet obtained DOJ approval of its Canine Teams General Order, which is a necessary step in fulfilling the requirements of these provisions of the MOA. As

indicated above, the OIM's review of MPD's Canine Unit training is ongoing.

MPD currently is in substantial compliance with MOA paragraph 146's requirement that 100% of its canines be "professionally bred." MPD's monitoring with respect to this provision's requirements related to the re-certification and refresher training of canines is ongoing.

D. Recommendations

Again this quarter, we strongly encourage MPD to finalize the Enhanced Field Training Officer Program Protocol and to develop and apply formal criteria for the selection of FTOs.

VII. Specialized Mission Units (MOA ¶¶ 149-159)

A. Requirements

The MOA recognizes that, from time to time, MPD may use both temporary and permanent specialized mission units ("SMUs") to achieve various legitimate law enforcement objectives. As to such SMUs, the MOA establishes the following requirements:

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such SMUs are permitted to participate. Participating officers must
 - o be current on firearms certification and training, and
 - o have a satisfactory record relating to the use of force, be adequately trained, be generally fit for service in a patrol unit, and match the needs of the SMU.
- MPD must disqualify from participation in such SMUs
 - (i) officers against whom there have been filed numerous credible complaints for excessive use of force and (ii) officers who are otherwise known to have used questionable force frequently in the past;
- Advance notice of which officers will be participating in such SMUs must be provided to unit supervisors to permit enhanced supervision or tailoring of activities;
- MPD must establish adequate supervision and clear lines of supervision and accountability for such SMUs and must ensure

that supervisory officers who volunteer for such units maintain their other supervisory responsibilities;

- Adequate specialized training (including training in relevant legal issues) must be provided to officers serving in such units; and
- All SMU participants must be closely and continually monitored. Such monitoring must encompass a review of any complaints filed against officers participating in SMU activities.

Further, the MOA requires that MPD develop a plan, subject to approval of DOJ, to limit the total number of hours that may be worked by a participating officer during any twenty-four-hour period and during any seven-day period. These limitations are designed to prevent officer fatigue.

B. Status and Assessment

On March 30, 2004, DOJ approved MPD's revised Specialized Mission Unit General Order.¹⁷⁵ MPD, however, requested and received leave to delay implementation of the approved policy to allow time for outstanding issues related to the Specialized Mission Unit After-Action Report to be resolved. Because the Specialized Mission Unit General Order has not been implemented, we have not had the opportunity to monitor whether MPD has established pre-screening mechanisms for SMU participants;¹⁷⁶ developed a pool of seasoned and competent officers with exemplary records and up-to-date training who are interested in participating in an SMU;¹⁷⁷ implemented specific tracking of enforcement actions, complaints, and misconduct investigations involving SMU members;¹⁷⁸ and provided for specialized training.¹⁷⁹

Our substantive monitoring with respect to SMUs will commence once implementation of the Specialized Mission Unit General Order has begun. The OIM has an outstanding request to MPD that we receive a

¹⁷⁵ MPD October 2004 Progress Report at 7-8.

¹⁷⁶ MOA at ¶ 150.

¹⁷⁷ MOA at ¶ 152.

¹⁷⁸ MOA at ¶ 158.

¹⁷⁹ MOA at ¶ 156.

list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.¹⁸⁰ This list will be useful in facilitating our further review of MPD's compliance with MOA paragraphs 149 through 158.

On February 23, 2004, MPD submitted to DOJ a draft general order entitled Limitation on Work Hours, which is intended to address the requirement under MOA paragraph 159 that MPD limit the total number of hours an officer may work in order to prevent officer fatigue. On June 10, 2004, DOJ provided MPD with comments to this draft general order, and MPD responded later that month. During this quarter, MPD requested that DOJ expedite its review of the Limitation on Work Hours General Order. Due to legislation recently passed by the City, MPD is now required, under certain circumstances, to provide officers to work "reimbursable details" at events and venues. MPD believes that implementation of the Limitation on Work Hours General Order, which would require supervisors to track the total number of hours worked by MPD officers, will help supervisors ensure that officers who are approaching their work hour limit are not assigned to "reimbursable details." DOJ is attempting to accommodate MPD's request for expedited review of this general order.¹⁸¹

C. Substantial Compliance Evaluation

MPD does not appear to be in substantial compliance with MOA paragraphs 149-158, which relate to SMUs. Although MPD obtained DOJ approval for its Specialized Mission Unit General Order earlier this year, the order has not yet been implemented. We will continue to monitor this area in the coming quarter and issue more detailed evaluations in our next report.

D. Recommendations

We strongly encourage MPD to implement the Specialized Mission Unit General Order as soon as possible so that the OIM can begin its monitoring in this area. We also remind MPD that the OIM has an outstanding request to MPD that we receive a list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.

¹⁸⁰ OIM Fourth Quarterly Report at 75.

¹⁸¹ MPD October 2004 Progress Report at 7.

VIII. Public Information (MOA ¶ 160)

A. Requirements

The MOA requires MPD to prepare quarterly reports, to be issued publicly, that include statistics relating to the use of force by MPD officers. The aggregate statistics must be broken down:

- By geographic areas of the City;
- By race-ethnicity of the subject of the use of force;
- By weapon used; and
- By enforcement action taken in conjunction with the use of force.

In addition, these public reports must include information about use of force investigations that have been conducted and information regarding the disposition of excessive use of force allegations.

B. Status and Assessment

We have not assessed MPD's public reporting of use of force statistics since our Fourth Quarterly Report. At that time, we found that MPD had made significant improvements in this area and that the 2002 FIT Annual Report, published in April 2003, "meets almost all of the MOA's requirements." We suggested, however, that in future reports MPD should clarify the different types of non-lethal force discussed to make the statistics more understandable to the public.¹⁸²

C. Substantial Compliance Evaluation

The OIM reserves until next quarter its substantial compliance evaluation with respect to MPD's compliance with MOA paragraph 160 regarding public reporting of use of force information. We will perform additional monitoring in this area in the coming quarter.

¹⁸² OIM Fourth Quarterly Report at 76-77.

IX. Monitoring, Reporting, and Implementation (MOA ¶¶ 161-193)

A. Requirements

The MOA requires MPD to designate an MPD Compliance Coordinator whose responsibility is to serve as the liaison among MPD, the Independent Monitor, and DOJ. The Compliance Coordinator's responsibilities include:

- Coordinating MPD compliance and implementation activities relating to the MOA;
- Facilitating the provision of data, documents and access to other MPD personnel for both the Independent Monitor and DOJ;
- Ensuring the proper maintenance of relevant documents and records relating to the MOA; and
- Working with the leadership of MPD to delegate compliance tasks to appropriate MPD personnel.

In addition to fulfilling these functions, the City and MPD are required to file with DOJ and the Independent Monitor a status report describing all steps taken during the reporting period designed to comply with each provision of the MOA.

B. Status and Assessment

1. Compliance Monitoring Team

Throughout the monitorship, we have been consistently impressed by -- and are grateful for -- the professionalism, efficiency, and responsiveness of MPD's CMT.

2. Full and Unrestricted Access to Staff, Facilities, and Documents

As we have reported previously, MPD continues to provide us with full and unrestricted access to MPD staff, facilities, and documents. Among other groups, MPD's CMT, OIA, FIT, IPS, and OPR deserve particular recognition. We have never had a problem with MPD or any of its personnel in this regard.

3. MPD Quarterly MOA Progress Reports

MPD published its quarterly MOA Progress Report on October 8, 2004. The OIM appreciates MPD's timely issuance of this report, which we found to be well written, well organized, and generally informative. Once again, we found MPD's Progress Report to be extremely useful in preparing this quarterly report.

C. Substantial Compliance Evaluation

MPD and the City currently are in substantial compliance with MOA paragraph 167, which requires that the OIM be afforded full and unrestricted access to all MPD and City staff, facilities, and documents. We have never experienced anything less than full and complete cooperation from MPD and the City.

MPD is in substantial compliance with MOA paragraph 173, which requires the assignment of a compliance coordinator. MPD's CMT has been highly effective in coordinating MPD compliance activities in connection with the MOA; facilitating access to MPD employees and the provision to the OIM of data and documents; ensuring that documents and records related to the MOA are maintained; and assisting MPD personnel in their compliance tasks.

MPD and the City are in substantial compliance with MOA paragraph 175, which requires the submission of quarterly progress reports to the OIM. The parties' quarterly reports are timely and very useful in the preparation of the OIM's reports.

The City and MPD also are in substantial compliance with the provision of MOA paragraph 176 requiring maintenance of all records documenting compliance with the terms of the MOA and all documents required by or developed pursuant to the MOA. MPD and the City both have been willing and able to produce for the OIM all material we have requested in connection with our monitoring activity. We have not evaluated the second provision of the paragraph 176 requiring the maintenance of officer training records during an officer's employment and for three years thereafter. This is an area we will evaluate in the future.

Conclusion

IT now has been more than three years since the MOA was signed on June 13, 2001. By its terms, the MOA terminates once MPD and the City have been found to have maintained substantial compliance with each of its provisions for at least two years, with the burden remaining on MPD and the City to demonstrate substantial compliance. As a result, this report contains the OIM's substantial compliance evaluations, based on the objective substantial compliance standards agreed to by the parties, across the substantive provisions of the MOA. The substantial compliance evaluations we have made this quarter combined with those we will make in our next quarterly report are intended to provide the parties with comprehensive, objective substantial compliance assessments with respect to each of the substantive requirements of the MOA.

As reflected in our substantial compliance evaluations this quarter, although MPD and the City have made enormous progress in certain areas governed by the MOA, MPD, and the City still have a great deal of work to do in order to demonstrate they have substantially complied with the MOA. In light of our prior quarterly reports, it should come as no surprise to the parties that significant improvements are necessary in the areas such as UFIR completion and quality, non-FIT use of force and misconduct investigations, and the FTO program. Moreover, this quarter we report with respect to the problems we have identified in the performance of the Use of Force Review Board. Finally, PPMS development remains at a virtual standstill due to the funding crisis MPD experienced earlier this year.

However, MPD has achieved substantial compliance in certain important areas of the MOA. DOJ has approved MPD's Use of Force General Order, which is a keystone of the MOA. MPD also has effectively implemented its Handling of Service Weapons General Order, another central component of the MOA. We also continue to find that MPD's deployments of canine units are made with the required supervisor approval or under exigent circumstances justifying the absence of such approval, although we will monitor further the trend we observed this quarter of non-Canine Unit supervisors frequently authorizing canine unit deployments.

MPD and the City are in substantial compliance with the MOA's provisions related to the facilitation of monitoring, reporting, and implementation of the MOA's requirements. We have never experienced

anything less than full and complete cooperation from MPD and the City. MPD's CMT has been highly effective in coordinating MPD compliance activities in connection with the MOA; facilitating access to MPD employees and the provision to the OIM of data and documents; ensuring that documents and records related to the MOA are maintained; and assisting MPD personnel in their compliance tasks. Moreover, MPD's quarterly reports are timely and very useful in the preparation of the OIM's reports.

We hope that this quarterly report helps to focus MPD's and the City's efforts on those areas where they are furthest removed from being in substantial compliance with the provisions of the MOA.



Michael R. Bromwich
Independent Monitor

November 12, 2004

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Appendix A (Acronyms)

AUSA	Assistant United States Attorney
CCRB	Citizen Complaint Review Board
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
DDRO	Department Discipline Review Office
DOJ	Department of Justice
FIT	Force Investigation Team
FLETC	Federal Law Enforcement Training Center
FOP	Fraternal Order of Police
FTO	Field Training Officer
IACP	International Association of Chiefs of Police ³
IPS	Institute of Police Science
JAD	joint application development
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OCCR
MPD	Metropolitan Police Department
MPO	master patrol officer
MPCTC	Maryland Police and Corrections Training Commission
OC	Oleoresin Capsicum
OCC	Office of Corporation Counsel
OCCR	Office of Citizen Complaint Review
OIA	Office of Internal Affairs

OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
PIO	policy improvement opportunity
PPMS	Personnel Performance Management System
PPO	probationary patrol officer
PSA	patrol service area
PwC	PricewaterhouseCoopers LLP
RFP	Request for Proposal
SMU	specialized mission unit
TFR	Tactical Field Report
TIO	tactical improvement opportunity
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office

Appendix B

Summary of Results of the OIM's Review of the Investigations Samples

1. Specific questions and results related to the administration and oversight of MPD investigations are summarized below.

- *Did the proper authority investigate the allegation? [MOA ¶¶ 57, 61, 64, 68, 72, 79, 80]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	95.9%	100.0%	96.6%	100.0%	100.0%
NO:	4.1%	0.0%	3.4%	0.0%	0.0%

- *Was the supervisor/official responsible for the investigation involved in the incident? [MOA ¶ 80]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	0.9%	0.0%	3.4%	0.0%	0.0%
NO:	99.1%	100.0%	96.6%	100.0%	100.0%

- *Did the supervisor/official responsible for the investigation have an apparent or potential conflict of interest related to the misconduct investigation? [MOA ¶ 80]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	2.2%	0.0%	3.4%	0.0%	0.0%
NO:	97.8%	100.0%	96.6%	100.0%	100.0%

- *Does the file include a report prepared by the investigator? [MOA ¶¶ 62, 65, 74, 102]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	88.3%	64.9%	69.4%	99.1%	82.4%
NO:	11.7%	35.1%	30.6%	0.9%	17.6%

- Does the investigator's report include [MOA ¶¶ 62, 65, 74, 102]:
 - A description of the use of force incident or alleged misconduct?

	Quarter				
	6th	7th	8th	9th	10th
YES:	95.3%	100.0%	100.0%	100.0%	100.0%
NO:	4.7%	0.0%	0.0%	0.0%	0.0%

- A summary of relevant evidence gathered?

	Quarter				
	6th	7th	8th	9th	10th
YES:	91.4%	100.0%	98.0%	100.0%	97.5%
NO:	8.6%	0.0%	2.0%	0.0%	2.5%

- Proposed findings and analysis supporting findings?

	Quarter				
	6th	7th	8th	9th	10th
YES:	90.2%	100.0%	98.0%	96.7%	98.9%
NO:	9.8%	0.0%	2.0%	3.3%	1.1%

- If the complaint was made at a location other than OPR, was it received by OPR within 24 hours or the next business day? [MOA ¶ 94]

	Quarter				
	6th	7th	8th	9th	10th
YES:	25.6%	38.9%	61.6%	33.1%	29.6%
NO:	74.4%	61.1%	38.4%	66.9%	70.4%

- Was the investigation completed within 90 days? [MOA ¶¶ 62, 65, 74, 103]

	Quarter				
	6th	7th	8th	9th	10th
YES:	63.1%	48.4%	53.7%	66.9%	52.5%
NO:	36.9%	51.6%	46.3%	33.1%	47.5%

- *If not completed within 90 days, were special circumstances for the delay explained? [MOA ¶¶ 62, 65, 74]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	10.9%	32.0%	5.5%	23.1%	8.5%
NO:	89.1%	68.0%	94.5%	76.9%	92.5%

2. Specific questions and results related to the conduct of MPD investigations are summarized below.

- *Were group interviews avoided? [MOA ¶ 81.c]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	98.1%	96.3%	100.0%	100.0%	100.0%
NO:	1.9%	3.7%	0.0%	0.0%	0.0%

- *Were all appropriate MPD officers, including supervisors, interviewed? [MOA ¶ 81.e]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	84.6%	98.0%	84.7%	99.3%	96.2%
NO:	15.4%	2.0%	15.3%	0.7%	3.8%

- *If practicable and appropriate, were interviews of complainants and witnesses conducted at sites and times convenient to them? [MOA ¶ 81.b]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	94.4%	96.6%	100.0%	100.0%	100.0%
NO:	5.6%	3.4%	0.0%	0.0%	0.0%

- *Were inconsistencies among officers and/or witnesses documented and addressed? [MOA ¶ 81.g]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	84.3%	100.0%	91.6%	100.0%	93.1%
NO:	15.7%	0.0%	8.4%	0.0%	6.9%

- *Was the conduct of each officer involved in the event adequately addressed for its propriety? [MOA ¶ 82]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	89.6%	93.9%	93.7%	98.1%	97.8%
NO:	10.4%	6.1%	6.3%	1.9%	2.2%

- *Was all apparent misconduct adequately addressed? [MOA ¶ 82]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	88.7%	94.5%	85.3%	98.3%	98.1%
NO:	11.3%	5.5%	14.7%	1.7%	1.9%

- *Did the investigator avoid giving automatic preference to an officer's statement over a citizen's statement? [MOA ¶ 99]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	62.8%	98.0%	94.5%	93.4%	71.6%
NO:	37.2%	2.0%	5.5%	6.6%	28.4%

- *Was the basis for closing the investigation without further investigation something other than the withdrawal of the complaint or the unavailability of the complainant? [MOA ¶ 101]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	80.9%	100.0%	100.0%	98.6%	98.0%
NO:	19.1%	0.0%	0.0%	1.4%	2.0%

- *Were the findings based upon a preponderance of the documented evidence? [MOA ¶ 98]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	97.0%	98.6%	100.0%	100.0%	100.0%
NO:	3.0%	1.4%	0.0%	0.0%	0.0%

- *Did all allegations of misconduct addressed by the investigation result in a finding of either unfounded, sustained, insufficient facts, or exonerated? [MOA ¶ 100]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	59.3%	98.0%	87.0%	89.8%	87.7%
NO:	40.7%	2.0%	13.0%	10.2%	12.3%

3. Specific questions and results related the unit commanders' review of MPD investigations are summarized below.

- *Did the unit commander review the investigation to ensure its completeness and that the findings are supported by the evidence? [MOA ¶ 66]*

	Quarter				
	6th	7th	8th	9th	10th
YES:	99.4%	100.0%	95.3%	100.0%	94.7%
NO:	0.6%	0.0%	4.7%	0.0%	5.3%

4. Below is a summary of the OIM reviewers' overall findings with respect to the completeness and sufficiency of MPD investigations.

- *Was the investigation complete?*

	Quarter				
	6th	7th	8th	9th	10th
YES:	60.7%	52.0%	30.4%	58.8%	50.4%
NO:	39.3%	48.0%	69.6%	41.2%	49.6%

- *Was the investigation sufficient?*

	Quarter				
	6th	7th	8th	9th	10th
YES:	77.6%	66.3%	57.0%	74.9%	58.3%
NO:	22.4%	33.7%	43.0%	25.1%	42.7%

MOA SUBSTANTIAL COMPLIANCE MATRIX

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	I. INTRODUCTION			
1	In January 1999, District of Columbia Mayor Anthony A. Williams and Chief Charles H. Ramsey requested the Department of Justice to review all aspects of the Washington Metropolitan Police Department's use of force. This unprecedented request indicated the City and the Chief's commitment to minimizing the risk of excessive use of force in the Washington Metropolitan Police Department (MPD) and to promoting police integrity. Because of the unusual genesis of the investigation—at the request of the agency to be investigated—the Department of Justice agreed that, parallel with its pattern or practice investigation, it would provide MPD with technical assistance to correct identified deficiencies during the course of the investigation. The Department of Justice conducted the investigation requested by the City, and analyzed every reported use of force and citizen complaint alleging excessive use of force during the period from 1994 to through early 1999. The Department of Justice also examined MPD's policies, practices, and procedures related to use of force.	NA	NA	NA
2	In addition to conducting an investigation, the Department of Justice has provided MPD with on-going technical assistance recommendations regarding its use of force policies and procedures, training, investigations, complaint handling, canine program, an early warning system. Based upon these recommendations, MPD has begun to implement necessary reforms in the manner in which it investigates, monitors, and manages use of force issues.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
3	The Department of Justice, the District of Columbia, and the District of Columbia Metropolitan Police Department, share a mutual interest in promoting effective and respectful policing. They join together in entering this agreement in order to minimize the risk of excessive use of force, to promote the use of the best available practices and procedures for police management, and to build upon recent improvements MPD has initiated to manage use of force issues. The parties acknowledge that additional reforms may be appropriate in order to identify and to prevent discriminatory law enforcement. The parties are currently reviewing officer communications on Mobile Data Terminals to identify unlawful or otherwise inappropriate conduct. Based upon the outcome of this review, MPD agrees to implement appropriate reforms.		<ol style="list-style-type: none"> 1. Implementation of systems to monitor Mobile Data Terminal communications. 2. Preparation of regular assessments related to the monitoring of MDT communications. 3. Implementation of appropriate reforms to address unlawful or inappropriate conduct identified by monitoring MDT communications. 	<ol style="list-style-type: none"> 1. Review MPD program for monitoring MDT communications. 2. Review MPD assessments related to the monitoring of MPD. 3. Review diversity and profiling training materials. 4. Review training records. 5. Review MPD policies and reforms implemented in response to unlawful or inappropriate conduct identified by the monitoring of MDT communications.
4	This agreement is effectuated pursuant to the authority granted DOJ under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. §14141) to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprive individuals of rights, privileges or immunities secured by federal law.	NA	NA	NA
5	Nothing in this Agreement is intended to alter the lawful authority of MPD police officers to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill their law enforcement obligations to the people of the District of Columbia in a manner consistent with the requirements of the Constitution and laws of the United States and the District of Columbia.	NA	NA	NA
6	Nothing in this Agreement is intended to: (a) alter the existing collective bargaining agreements between the City and MPD employee bargaining units; or (b) impair the collective bargaining rights of employees in those units under law.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
7	This Agreement constitutes the entire integrated agreement of the parties. With the exception of the latest working drafts and correspondence resulting from the technical assistance described in paragraph 2, no prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.	NA	NA	NA
8	This Agreement is binding upon the parties hereto, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the parties. No person or entity is intended to be a third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the District Columbia for its conduct or the conduct of MPD officers. This Agreement does not constitute an admission, adjudication, or finding on the merits in any action or proceeding. This Agreement does not authorize, nor shall it be construed to authorize, access to any City or MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, and the Independent Monitor.	NA	NA	NA
9	The term “actively resisting” means the subject is making physically evasive movements to defeat the officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested.	NA	NA	NA
10	The term “CCRB” means the Citizen Complaint Review Board.	NA	NA	NA
11	The term “City” means the City of the District of Columbia.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
12	The term “complaint” means any complaint by a member of the public regarding MPD services, policy or procedure, claims for damages (which allege officer misconduct) or officer misconduct; and any allegation of possible misconduct made by an MPD officer. All complaints shall be recorded on the complaint form described in paragraph 88. A complaint may be initiated by any of the methods set forth in paragraph 92. For purposes of this Agreement, the term “complaint” does not include any allegation of employment discrimination.	NA	NA	NA
13	The term “complainant” means any person who files a complaint against an officer or MPD.	NA	NA	NA
14	The term “consult” means an exchange of information in a timely manner between the parties intended to consider the parties’ respective positions. This exchange of information shall include, but not be limited to, preliminary investigative files, reports, statements, photographs, and radio runs, as such items become available.	NA	NA	NA
15	The term “deadly force” means any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.	NA	NA	NA
16	The term “Department” means the Washington Metropolitan Police Department.	NA	NA	NA
17	The terms “document” and “record” include all “writings and recordings” as defined by Federal Rules of Evidence Rule 1001(1).	NA	NA	NA
18	The term “DOJ” means the United States Department of Justice and its agents and employees.	NA	NA	NA
19	The term “effective date” means the day this Agreement is signed by all the parties.	NA	NA	NA
20	The term “FIT” means the Force Investigation Team.	NA	NA	NA
21	The term “including” means “including, but not limited to.”	NA	NA	NA
22	The term “Independent Monitor” or “Monitor” as used in this document means the Monitor established by Section X of this Agreement, and all persons or entities associated by the Monitor to assist in performing the monitoring tasks.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
23	The term “MPD” means the Chief of Police of the Department and all employees under his or her command.	NA	NA	NA
24	The term “MPD employee” means any employee under the command of the Chief of Police, including civilian employees.	NA	NA	NA
25	The term “MPD unit” means any officially designated organization of officers within MPD, including Regional Operation Centers, Districts, Divisions, Groups, Patrol Service Areas, Teams, and specialized units.	NA	NA	NA
26	The term “manager” means an MPD supervisor at the rank of lieutenant or above.	NA	NA	NA
27	The term “non-deadly force” means any use of force that is neither likely nor intended to cause death or serious physical injury.	NA	NA	NA
28	The term “non-disciplinary action” refers to action other than discipline taken by an MPD supervisor to enable or encourage an officer to modify his or her performance. It may include: oral or written counseling; training; increased field supervision for a specified time period; referral to Police/Fire Clinic; referral to the Employee Assistance Program; a change of an officer’s partner; or a reassignment or transfer.	NA	NA	NA
29	The term “OCCR” refers to the Office of Citizen Complaint Review.	NA	NA	NA
30	The term “OPR” refers to the Office of Professional Responsibility.	NA	NA	NA
31	The term “police officer” or “officer” means any law enforcement officer employed by MPD, including supervisors and managers.	NA	NA	NA
32	The term “PPMS” means Personnel Performance Management System.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
33	The term “serious use of force” means lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine.	NA	NA	NA
34	The term “supervisor” means sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers and managers.	NA	NA	NA
35	The term “use of force” means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include unresisted handcuffing. The term “use of force indicating potential criminal conduct by an officer” shall include all strikes, blows, kicks or other similar uses of force against a handcuffed subject.	NA	NA	NA
	II. GENERAL USE OF FORCE POLICY REQUIREMENTS			
	A. General Use of Force Policy			
36	DOJ acknowledges that MPD has initiated a number of important use of force policy reforms. The provisions in this section build upon MPD’s ongoing initiatives.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
37	MPD shall complete development of a Use of Force Policy that complies with applicable law and current professional standards. The policy shall emphasize the goal of de-escalation and shall encourage officers to use advisements, warnings, and verbal persuasion when appropriate. The policy shall advise that the use of excessive force shall subject officers to discipline and possible criminal prosecution and/or civil liability.	<ol style="list-style-type: none"> 1. Development and distribution of appropriate use of force policy. 2. Proper training on use of force policy. 3. Proper implementation of use of force policy. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of use of force policy. 2. Distribution of approved use of force policy to MPD officers. 3. Training fairly, accurately, and properly summarizes principles of use of force policy. 4. ≥95% of MPD officers trained in approved use of force policy. 5. Use of force by MPD officers is consistent with principles and standards contained in the use of force policy in ≥95% of cases reviewed 	<ol style="list-style-type: none"> 1. DOJ approved use of force policy. 2. Monitor in-service and new recruit training. 3. Review all FIT I and FIT II investigations. 4. Review sample of chain of command and OPR use of force investigations. 5. Review UFIRs.
38	The policy shall define and describe the types of force and the circumstances under which use of such force is appropriate. The policy shall prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may escalate to the point where deadly force would be authorized.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.
39	The policy shall require officers, when feasible, to identify themselves as police officers and to issue a warning before discharging a firearm.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.
40	The policy shall require officers, immediately following a use of force, to inspect subjects for injury resulting from the use of force, and to obtain any necessary medical care.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	B. Use of Firearms Policy			
41	MPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official MPD channels, and shall specify the number of rounds MPD authorizes its officers to carry.	<ol style="list-style-type: none"> 1. Development and distribution of appropriate use of firearms policy. 2. Proper training on use of firearms policy. 3. Proper implementation of use of firearms policy. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of use of firearms policy. 2. Distribution of approved use of firearms policy to MPD officers. 3. Training fairly, accurately, and properly summarizes principles of use of firearms policy. 4. ≥95% of MPD officers trained in approved use of firearms policy. 5. Use of firearms by MPD officers is consistent with principles and standards contained in the Handling of Service Weapons General Order in ≥95% of cases reviewed. 	<ol style="list-style-type: none"> 1. Review FIT investigations involving use of firearms. 2. Review chain of command investigations related to dog shootings. 3. Monitor in-service and new recruit training. 4. Monitor firearms qualification and requalification records. 5. Monitor armorer's records for cases where officer claims weapon malfunction. 6. Monitor misconduct cases related to failures to qualify and requalify. 7. Monitor disciplinary actions for failures to follow requirements of Handling of Service Weapons General Order. 8. Review UFIRs.
42	Within 30 days from the effective date of this agreement, the Mayor of the District of Columbia shall submit a request to the City Council for the District of Columbia for an amendment to Section 206.1 of Title 6A of the District of Columbia Municipal Regulations. The requested amendment shall permit the Chief of Police to determine the policy concerning the off-duty carrying of firearms by MPD officers while in the District of Columbia, including, but not limited to appropriate prohibitions regarding the carrying and or use of firearms in situations where an officer's performance may be impaired.	<ol style="list-style-type: none"> 1. Submission of request for amendment permitting Chief of Police to set policy for off-duty carrying of firearms. 2. Chief of Police establishes off-duty carrying of firearms while in DC, including limitations. 	<ol style="list-style-type: none"> 1. Submission of amendment request by the Mayor. 2. Development and implementation of off-duty carrying of firearms policy. 3. Training fairly, accurately, and properly summarizes principles of off-duty carrying of firearms policy. 4. Carrying and use of off-duty firearms by MPD officers is consistent with principles and standards contained in off-duty carrying of firearms policy in ≥95% of cases reviewed. 	<ol style="list-style-type: none"> 1. Review training in off-duty carrying policy. 2. Review allegations of violation of off-duty carrying policy. 3. Review of disciplinary actions related to violation of off-duty carrying policy. 4. Review FIT investigations to determine whether discharges and shootings involved authorized weapons.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
43	The policy shall require that when a weapon reportedly incurably malfunctions during an officer's attempt to fire, the weapon shall be taken out of service and an MPD armorer shall evaluate the functioning of the weapon as soon as possible. The policy shall require that, following the evaluation by the armorer, MPD shall document in writing whether the weapon had an inherent malfunction and was removed from service, malfunctioned because it was poorly maintained, or if the malfunction was officer-induced and a determination of the causes.	<ol style="list-style-type: none"> 1. Weapons that incurably malfunction promptly taken out of service. 2. MPD armorer promptly evaluates weapon and documents findings. 3. MPD properly documents weapon malfunctions and removal of weapons from service. 	<ol style="list-style-type: none"> 1. Armorer completes analysis within 30 days, absent document special circumstances, in ≥95% of cases involving alleged malfunction of weapon. 2. MPD properly and completely documents weapon malfunctions and reasons for malfunction in =95% of cases. 3. Weapons taken out of service are properly disposed of in =95% of cases of incurable malfunctions. 4. If the malfunction was officer-induced, proper remedial or disciplinary action was taken in ≥95% of cases. 5. Weapon taken out of service and armorer notified in ≥95% of cases where FIT investigations finds malfunction to be the cause of a weapon discharge. 	<ol style="list-style-type: none"> 1. Review armory records. 2. Interview Glock representatives. 3. Review FIT investigations. 4. Review misconduct investigations and disciplinary records relating to officer-induced firearms malfunctions. 5. Review UFRB cases. 6. Monitor new recruit and in-service firearms training.
	C. Canine Policies and Procedures			
44	DOJ acknowledges that MPD has implemented an interim canine policy via teletype and has initiated significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
45	The policy shall limit off-leash canine deployments, searches and other instances where there is otherwise a significant risk of a canine bite to a suspect, to instances in which the suspect is wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed. MPD shall continue to require canine officers to have approval from an immediate supervisor (sergeant or higher) before the canine can be deployed. If the handler is unable to contact a canine unit supervisor, approval must be sought from a field supervisor before the canine can be deployed. The approving supervisor shall not serve as a canine handler in the deployment. MPD shall continue to issue a loud and clear announcement that a canine will be deployed and advise the suspect to surrender and remain still if approached by a canine.	<ol style="list-style-type: none"> 1. Development and distribution of appropriate canine policy. 2. Proper training on canine policy. 3. Proper implementation of canine policy. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of canine policies. 2. Distribution of canine policy to appropriate units. 3. Training fairly, accurately, and properly summarizes principles of Canine Policy. 4. ≥95% of canine unit deployments and bite incidents are consistent with principles and standards contained in the canine policy. 	<ol style="list-style-type: none"> 1. Canine policies and general orders. 2. Monitor in-service, new recruit, and canine training. 3. Review FIT I and FIT II investigations. 4. Review canine deployment reports in canine database. 5. Interview canine unit officers.
46	The policy shall also require that in all circumstances where a canine is permitted to bite or apprehend a suspect by biting, the handler shall call off the dog at the first possible moment the canine can be safely released. Whenever a canine-related injury occurs, immediate medical treatment must be sought either by rescue ambulance, transportation to an emergency room, or admission to a hospital.	Same as ¶ 45.	Same as ¶ 45.	Same as ¶ 45.
	D. Oleoresin Capsicum Spray Policy			
47	MPD shall complete development of an Oleoresin Capsicum Spray (OC Spray) policy that complies with applicable law and current professional standards. The policy shall prohibit officers from using OC Spray unless The officer has legal cause to detain, take into legal custody or to maintain in custody a subject who is, at a minimum, actively resisting The officer. The policy shall prohibit officers from using OC Spray to disperse crowds or others unless those crowds or others are committing acts of public disobedience endangering public safety and security.	<ol style="list-style-type: none"> 1. Development and distribution of appropriate OC spray policy. 2. Proper training on OC spray policy. 3. Proper implementation of OC spray policy. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of OC spray policy. 2. Distribution of OC spray policy. 3. Training fairly, accurately, and appropriately summarizes principles of OC spray policy. 4. ≥95% of uses of OC spray by MPD officers are consistent with principles and standards contained in the OC spray policy. 	<ol style="list-style-type: none"> 1. Review OC spray policies and general orders. 2. Monitor in-service and new recruit training. 3. Review all FIT investigations. 4. Review samples of chain of command and OPR investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
48	The policy shall provide that, absent exceptional circumstances, officers shall not use OC spray on children and elderly persons. The policy shall prohibit officers from using OC spray to prevent property damage except when its use meets the standard defined in paragraph 47 above.	Same as ¶ 47.	Same as ¶ 47.	Same as ¶ 47.
49	The policy shall require officers to issue a verbal warning to the subject unless a warning would endanger the officer or others. The warning shall advise the subject that OC spray shall be used unless resistance ends. The policy shall require that prior to discharging the OC spray, officers permit a reasonable period of time to allow compliance with the warning, when feasible.	Same as ¶47.	Same as ¶ 47.	Same as ¶ 47.
50	The policy shall require officers to aim OC spray only at a person's face and upper torso. The policy shall require officers to utilize only two, one second bursts and to do so from at least 3 feet away from the subject, unless exceptional circumstances require otherwise. The policy shall require that, absent exceptional circumstances, officers shall decontaminate every sprayed subject with cool water or a decontamination solution within 20 minutes after the application of the spray. Officers shall transport sprayed subjects to the hospital for treatment when they complain of continued effects after having been contaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by OC Spray. The policy shall prohibit officers from keeping any sprayed subject in a face down position, in order to avoid positional asphyxia.	Same as ¶ 47.	Same as ¶ 47.	Same as ¶ 47.
	E. Implementation Schedule			
51	MPD shall complete development of the policies and procedures referenced in this section within 30 days from the effective date of the agreement. In developing the final policies and procedures, MPD shall build upon the latest working drafts and correspondence exchanged between DOJ and MPD during the course of the investigation.	1. Development and distribution of required policies and procedures.	1. Development and DOJ approval of all required policies. 2. Distribution of all required policies.	1. MPD policies and general orders.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
52	Prior to implementation of the policies and procedures referenced in this section, MPD shall submit them to DOJ for approval. In the event MPD revises any of the policies, procedures, or forms referenced in this section during the term of this agreement, it shall obtain approval from DOJ prior to implementation of the revised policy or form.	1. Ensure future revisions of policies, procedures, forms are approved by DOJ.	1. MPD obtains DOJ approval of all required policies, procedures or forms.	1. Communications between DOJ and MPD.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	III. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW			
	A. Use of Force Reporting Policy and Use of Force Incident Report			
53	MPD shall complete development of a Use of Force Reporting policy and Use of Force Incident Report. The policy shall require officers to notify their supervisor immediately following any use of force or receipt of an allegation of excessive use of force and to complete a Use of Force Incident Report. Additionally, the policy shall require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person. The policy shall require supervisors, upon notification of a use of force or allegation of excessive force, to respond to the scene. In every incident involving deadly force, as defined by paragraph 15, a serious use of force, as defined by paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined by paragraph 35, the supervisor shall ensure that the Force Investigation Team (FIT) is immediately notified.	<ol style="list-style-type: none"> 1. Development and distribution of use of force reporting policy. 2. Development of UFIR. 3. Training on use of force reporting policy and appropriate completion of UFIR. 4. Notification of supervisors by officers 5. Supervisors report to incident scene. 6. Appropriate and timely notification of FIT. 7. Officers fill out UFIR as required by policy. 	<ol style="list-style-type: none"> 1. Development and distribution of DOJ-approved use of force reporting policy. 2. Development of UFIR. 3. Training on use of force reporting policy fairly, accurately, and appropriately summarizes principles of policy and properly instructs on completion of UFIR. 4. ≥95% of officers have received training on new use of force policy. 5. Proper and timely notification of supervisors occurs in ≥95% of cases where there is use of force or allegation of use of force. 6. Supervisors as soon as possible report to incident scene in ≥95% of cases in which they are notified of use of force. 7. FIT notified within one hour in ≥95% of cases involving use of deadly or serious force or allegation of use of such force. 8. UFIRs completed for ≥95% of use of force incidents. 9. ≥95% of UFIRs contain all required information 	<ol style="list-style-type: none"> 1. Review use of force policies and general orders. 2. Review UFIRs. 3. Monitor in-service and new recruit training. 4. Monitor supervisor training. 5. Review all FIT I and FIT II investigations. 6. Review samples of chain of command and OPR investigations. 7. Review all UFIRs. 8. Officer interviews regarding UFIRs completion. 9. Monitor FIT rollouts.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
54	MPD shall notify the Office of the United States Attorney for the District of Columbia (USAO) immediately, in no case later than the next business day, following a deadly use of force or a serious use of force by an MPD officer or following any use of force indicating potential criminal conduct by an officer.	1. Prompt notification of USAO by MPD in specified categories of cases.	1. Prompt notification (no later than next business day) in ≥95% of cases involving deadly use of force, serious use of force, or use of force indicating potential criminal misconduct by officer.	1. Review AUSA Notification Log. 2. Review all FIT I and FIT II investigative reports.
55	Data captured on the reports described above in paragraph 53 shall be entered into MPD's Personnel Performance Management System (PPMS). Hard copies of these reports shall be maintained centrally by the Office of Professional Responsibility.	1. Entry of required information into PPMS. 2. Maintenance of hard copies of UFIRs at OPR.	1. Information from UFIRs accurately entered into PPMS with ≥95% level of accuracy and completeness. 2. Hard copies of ≥95% of all completed UFIR reports maintained in hard copy form at OPR.	1. Review PPMS data. 2. Review UFIRs. 3. Review FIT investigations.
	B. Investigating Uses of Force and Misconduct Allegations			
	1. Use of Force Investigation			
56	MPD created the Force Investigation Team (FIT) to conduct fair, impartial and professional reviews of firearm discharges. The provisions in this section build upon the investigative techniques employed by FIT and expand FIT's role within MPD.	NA	NA	NA
57	Within 60 days from the effective date of this Agreement, MPD shall fully implement its plan, subject to approval of DOJ, to reallocate responsibility for MPD criminal investigations of officer use of force from District Violent Crime Unit supervisors or other District supervisors to the Force Investigation Team (FIT). The plan shall include procedures to address the rights and responsibilities of officers and supervisors in carrying out their duties, including the preparation of both preliminary investigative files and complete investigative files.	1. Reallocation of criminal use of force investigations from Violent Crime Unit supervisors to FIT. 2. Development of procedures to address rights and responsibilities in carrying out use of force investigative responsibilities.	1. 100% transfer of criminal investigations of MPD officers in use of force cases to FIT. 2. Development and implementation of procedures that adequately address use of force investigative responsibilities of officers and supervisors, including preparation of investigative files. 3. DOJ approval of FIT policies, procedures, and manuals.	1. Review FIT investigations. 2. Review samples of chain of command and OPR use of force and misconduct investigations. 3. Review FIT manuals and other MPD policies and general orders relating to the investigation of uses of force. 4. Review FIT training materials.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
58	MPD shall consult with the USAO regarding the investigation of an incident involving deadly force, a serious use of force, or any other force indicating potential criminal misconduct by an officer. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 60. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.	<ol style="list-style-type: none"> 1. Development and distribution of policies requiring consultation with the USAO in all investigations involving <ul style="list-style-type: none"> • use of deadly force • use of serious force • any other use of force reflecting potential criminal misconduct of an officer. 2. Development and distribution of policies regarding delay of compelled statements by officers potentially subject to prosecution. 3. Development and distribution of policies requiring continuation of other aspects of investigation. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of policies requiring <ul style="list-style-type: none"> • consultation with USAO • delay of compelled interviews • continuation of investigations while case pending at USAO. 2. Prescribed consultation with USAO takes place in ≥95% of cases. 3. Delay of compelled statements takes place in 100% of cases in which USAO or MPD seeks to have case pursued criminally. 4. Aspects of investigations not related to appropriately delayed compelled statements proceed in ≥95% of cases. 	<ol style="list-style-type: none"> 1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review FIT investigations. 4. Interview AUSAs. 5. Review disciplinary records.
59	In every incident involving deadly force, a serious use of force, or any use of force indicating potential criminal misconduct by an officer, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.	N/A	N/A	N/A

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
60	MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents subject to the notice and consultation provisions described in paragraphs 58 and 59.	<ol style="list-style-type: none"> 1. Development and distribution of policies regarding investigations involving potential criminal misconduct of an officer, including provisions regarding the notification of and consultation with USAO and delay of compelled statements by officers potentially subject to prosecution. 2. Development and distribution of policies barring compelled officer statements in such criminal investigations without USAO declination. 	<ol style="list-style-type: none"> 1. See ¶ 58 above. 	<ol style="list-style-type: none"> 1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review FIT investigations. 4. Interview AUSAs.
61	FIT shall respond to the scene of every incident involving deadly force, a serious use of force, or any use of force indicating potential criminal misconduct by an officer. In each of these incidents, FIT shall conduct the investigation of the use of force. That investigation may result in criminal charges, administrative action or both. Investigators from the involved officers' District shall not conduct the investigation. Based upon its review of use of force incidents from throughout MPD, FIT shall forward policy and training recommendations to the Chief of Police or his designee.	<ol style="list-style-type: none"> 1. FIT response to the scene of every incident involving deadly force, a serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. FIT investigation of all such incidents. 3. Investigators from involved officers' district barred from investigation. 4. FIT forwards policy and training recommendations to MPD. 	<ol style="list-style-type: none"> 1. ≥95% FIT response and investigation of incidents involving deadly force, serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. Investigators from involved districts properly excluded from ≥95% of FIT investigations. 3. Periodic policy and training recommendations from FIT, at least annually. 4. MPD implementation of appropriate FIT policy and training recommendations. 	<ol style="list-style-type: none"> 1. Review FIT investigations. 2. Review FIT training materials re conduct of investigations involving deadly force, serious use of force, or use of force indicating potential criminal misconduct by an officer. 3. Review FIT policy and training recommendations. 4. Review MPD and IPS consideration and implementation of FIT policy and training recommendations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
62	FIT shall complete its administrative use of force investigations within 90 days from the criminal declination described in paragraph 60, absent special circumstances which must be documented, and shall continue to conduct investigations in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent [with] MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.	<ol style="list-style-type: none"> 1. FIT investigations complete within 90 days of declination, absent documented special circumstances. 2. FIT reports containing required documentation and information, including <ul style="list-style-type: none"> • Description of all uses of force identified during investigation • Summary and analysis of all relevant evidence • Proposed findings <ul style="list-style-type: none"> ○ Whether use of force consistent with MPD policy ○ Whether proper tactics employed; ○ Whether lesser force alternatives available. 	<ol style="list-style-type: none"> 1. =95% of FIT investigations completed within 90 days of declination, absent documented special circumstances. 2. =95% of FIT reports contain required documentation and information, as specifically set forth in this paragraph. 	<ol style="list-style-type: none"> 1. Review FIT investigations.
63	Within 120 days from the effective date of this Agreement, MPD shall train and assign a sufficient number of personnel to FIT to fulfill the requirements of this Agreement.	<ol style="list-style-type: none"> 1. Sufficient training and staffing to accomplish FIT's responsibilities under the MOA. 	<ol style="list-style-type: none"> 1. ≥95% FIT response and investigation of incidents involving deadly force, a serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. =95% of FIT investigations complete within 90 days of declination, absent documented special circumstances. 3. =95% of FIT reports containing required documentation and statement of proposed findings. 	<ol style="list-style-type: none"> 1. Review FIT investigations. 2. Review FIT training materials and sessions. 3. Review FIT policies and manuals. 4. Review personnel needs assessment.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
64	Chain of command district supervisors may investigate all use of force incidents except for those incidents involving a serious use of force, serious physical injury, or any use of force indicating potential criminal conduct by an officer. At the discretion of the Chief of Police or designee, any incident that may be investigated by chain of command district supervisors may be assigned for investigation to FIT or to chain of command supervisors from a district other than the district in which the incident occurred. No supervisor who was involved in the incident shall be responsible for the investigation of the incident.	<ol style="list-style-type: none"> 1. Incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer shall not be investigated by chain of command. 2. Involved supervisors shall not be responsible for investigation of incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer. 3. Chief of Police or designee shall have the discretion to assign any investigation to FIT or to the chain of command of a district other than the district in which the incident occurred. 	<ol style="list-style-type: none"> 1. ≤5% of investigations involving serious uses of force, serious physical injury, or potential criminal conduct by an officer conducted by chain of command. 2. ≤5% of investigations of incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer participated in by supervisor involved in incident. 3. 100% of investigations directed by the Chief or designee to be removed from a district's chain of command are reassigned to FIT or another district. 	<ol style="list-style-type: none"> 1. Review samples of chain of command investigations. 2. Review all FIT investigations. 3. Review MPD investigations policies and general orders.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
65	Chain of command use of force investigations shall be completed within 90 days following the use of force incident, absent special circumstances which must be documented, and shall be conducted in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the proposed findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent and MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.	<ol style="list-style-type: none"> Chain of command investigations completed within 90 days, absent documented special circumstances. Chain of Command investigation reports contain required documentation and information, including <ul style="list-style-type: none"> Description of all uses of force identified during investigation Summary and analysis of all relevant evidence Proposed findings <ul style="list-style-type: none"> Whether use of force consistent with MPD policy; Whether proper tactics employed; Whether lesser force alternatives available. 	<ol style="list-style-type: none"> ≈90% of chain of command investigations completed within 90 days of use of force or contain documented special circumstances justifying the delay. ≈95% of chain of command investigation reports contain required documentation and statement of proposed findings, as specifically set forth in this paragraph. 	<ol style="list-style-type: none"> Review samples of chain of command investigations.
66	Upon completion of a chain of command use of force investigation, the investigator shall forward the investigation to the Unit Commander, who shall review the investigation to ensure that it is complete and that the findings are supported by the evidence. The Unit Commander shall order additional investigation when necessary. When the Unit Commander determines the investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Use of Force Review Board (UFRB). Whenever there is evidence of criminal wrongdoing, the Unit Commander shall suspend the investigation immediately and notify FIT and the USAO.	<ol style="list-style-type: none"> Completed chain of command investigations forwarded to Unit Commanders. Unit Commanders review chain of command investigations for completeness and adequacy of the evidence. Unit Commanders order additional investigation where necessary. Unit Commanders forward completed investigations to FIT. Unit Commanders suspend investigations indicating criminal wrongdoing and refer such cases to FIT and USAO. 	<ol style="list-style-type: none"> ≈95% of chain of command cases processed in accordance with this paragraph. FIT and USAO notified of ≈95% of chain of command cases involving potential criminal wrongdoing. 	<ol style="list-style-type: none"> Review samples of chain of command investigations. Review USAO logs. Review UFRB docket and dispositions.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
67	<p>Within 60 days from the effective date of this Agreement, MPD shall complete the development and implementation of a policy to enhance the UFRB, subject to approval by DOJ. The policy shall require the UFRB to conduct timely reviews of all use of force investigations. The policy shall set forth the membership of the UFRB and establish timelines for UFRB review of use of force investigations. The policy shall authorize the UFRB to recommend discipline for violations of MPD's policies and training. The policy shall authorize the UFRB to direct District supervisors to take non-disciplinary action to enable or encourage an officer to modify his or her performance. The policy shall require the UFRB to act as a quality control mechanism for all use of force investigations, with the responsibility to assign to FIT, or return to the investigating unit, all incomplete or mishandled use of force investigations. The policy shall provide the UFRB the authority and responsibility to recommend to the Chief of Police, or his designee, investigative protocols and standards for all force investigations. The policy shall require the UFRB to conduct annual reviews of all use of force cases examined to detect patterns/problems and to issue a report to the Chief of Police with findings and recommendations.</p>	<ol style="list-style-type: none"> 1. Development of UFRB policy that: <ul style="list-style-type: none"> • Requires timely reviews of all use of force investigations. • Sets forth UFRB membership and establishes timelines for reviews. • Requires UFRB to perform quality control for use of force investigations. • Requires UFRB annual reviews and reports. 2. UFRB acting in conformity with these provisions, including <ul style="list-style-type: none"> • Performing timely reviews. • Serving quality control function in use of force investigations. 3. UFRB conducts annual reviews of all use of force cases. 	<ol style="list-style-type: none"> 1. Development and implementation of UFRB policy with required provisions as set forth in this paragraph. 2. UFRB reviews use of force investigations within 90 days of completion of investigations. 3. UFRB files reflect quality control function. 4. UFRB recommends meaningful investigative protocols consistent with best police practices. 5. UFRB's annual reviews reflect meaningful effort to <ul style="list-style-type: none"> • detect patterns and problems • formulate findings and recommendations. 	<ol style="list-style-type: none"> 1. Review UFRB policies and procedures. 2. Review UFRB docket and case index. 3. Review samples of UFRB dispositions. 4. Monitor UFRB hearings. 5. Review UFRB annual reports.
	2. Investigations of Misconduct Allegations			
68	<p>The Office of Professional Responsibility shall be responsible for the investigation of allegations of criminal misconduct set forth in the categories in paragraph 72, (a) through (i) below. Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to allocate sufficient personnel and establish procedures to accomplish this new responsibility.</p>	<ol style="list-style-type: none"> 1. MPD staffing plan and procedures for OPR misconduct investigations. 	<ol style="list-style-type: none"> 1. Development and implementation of staffing plan and procedures for OPR misconduct investigations. 2. OPR conducts or supervises timely investigations of allegations of criminal misconduct 	<ol style="list-style-type: none"> 1. Review OPR policies and procedures. 2. Review FIT investigations. 3. Review samples of misconduct investigations. 4. Review OPR personnel needs assessment.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
69	MPD shall notify the USAO immediately, in no case later than the next business day, following the receipt or discovery of any allegations of criminal misconduct referred to in paragraphs 72 and 73. In every incident involving allegations of criminal misconduct referred to in paragraphs 72 and 73, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.	1. Prompt notification of USAO by MPD in specified categories of cases.	1. Prompt notification (no later than next business day) in ≥95% of cases involving potential criminal misconduct by officer.	1. Review USAO Notification Log 2. Review FIT investigations 3. Review samples of misconduct investigations. 4. Review OPR personnel needs assessment.
70	MPD shall consult with the USAO regarding the investigation of an incident involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 71. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.	1. Development and distribution of policies requiring consultation with the USAO in all investigations involving specified allegations of criminal misconduct 2. Development and distribution of policies requiring delay of compelled statements by officers potentially subject to prosecution. 3. Development and distribution of policies requiring continuation of other aspects of investigation.	1. Development and DOJ approval of policies requiring <ul style="list-style-type: none"> • consultation with USAO • delay of compelled interviews • continuing of investigation while case pending at USAO. 2. Prescribed consultation with USAO takes place in >95% of cases. 3. Delay of compelled statements takes place in 100% of cases in which USAO or MPD seeks to have case pursued criminally. 4. Remainder of investigation proceeds in >95% of cases in which certain compelled statements are delayed.	1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review samples of misconduct investigations. 4. Discussions with USAO.
71	MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73.	Same as ¶ 70.	Same as ¶ 70.	Same as ¶ 70.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
72	Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to reallocate responsibility for MPD administrative complaint investigations of misconduct complaints from chain-of-command District supervisors to OPR with respect to the following:	1. Development and approval of MPD plan re allocation of responsibility for misconduct investigations between the chain of command and OPR.	1. Development and implementation of plan with required provisions. 2. OPR investigations opened in =95% of the cases described in ¶¶ 72(a)-(j).	1. Review MPD policies and procedures defining jurisdiction over misconduct investigations. 2. Review Corporation Counsel dockets. 3. Review JSOC logs. 4. Review samples of OPR and chain of command misconduct investigations.
a	all referrals pursuant to paragraphs 76 and 77;			
b	all civil suits alleging any misconduct by an officer while acting in an official capacity;			
c	all civil suits against an officer for off-duty conduct (while not acting in an official capacity) that alleges physical violence, threats of physical violence, or racial bias;			
d	all criminal arrests of or filing of criminal charges against an officer;			
e	all allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;			
f	all allegations of unlawful search and stops;			
g	all allegations of unlawful seizure (including false imprisonment and false arrest);			
h	any act of retaliation or retribution against an officer or person; and			
i	all allegations of strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose; and			
j	OPR shall assign for investigation outside of the District Chain of Command all allegations of misconduct related to the types of misconduct covered by “a” to i” of this paragraph; and	1. OPR shall not refer misconduct referred to in 72(a)-(i) to chain of command.	1. =95% of specified cases are investigated by OPR rather than chain of command.	1. Review samples of misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	OPR shall assign to FIT all allegations of excessive force by an officer involving a use of deadly force, as defined in paragraph 15, a serious use of force, as defined in paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined in paragraph 35.	1. OPR refers to FIT allegations of excessive force involving use of deadly force, use of serious force or use of force indicating criminal conduct.	1. 100% of cases involving allegations of excessive force use of deadly force, use of serious force or use of force indicating criminal conduct are investigated by FIT.	1. Review samples of OPR and chain of command use of force and misconduct investigations. 2. Review all FIT investigations. 3. Review UFRB dispositions. 4. Monitor UFRB hearings.
73	OPR shall also assign for administrative investigation outside of the District chain of command the following:	1. Investigations by entity other than chain of command in cases where: a. a person is charged with resisting arrest and the prosecutor or court dismisses the charge based upon officer credibility b. MPD receives written notification that (i) evidence is suppressed for a constitutional violation, or (ii) other judicial finding of misconduct. 2. MPD makes written requests to prosecutors' offices for notification of these cases.	1. ≥95% of specified cases assigned for investigation outside the chain of command. 2. Record maintained of MPD written requests for notice from USAO.	1. Review samples of chain of command and OPR investigations. 2. Review MPD written requests for notice from USAO.
a	all incidents in which both (i) a person is charged by an officer with assault on a police officer, resisting arrest, or disorderly conduct, and (ii) the prosecutor's office notifies MPD either that it is dismissing the charge based upon officer credibility or a judge dismissed the charge based upon officer credibility;			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
b	all incidents in which MPD has received written notification from a prosecuting agency in a criminal case that there has been (i) an order suppressing evidence because of any constitutional violation involving potential misconduct by an MPD officer, or (ii) any other judicial finding of officer misconduct made in the course of a judicial proceeding or any request by a federal or District of Columbia judge or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. MPD shall request that all prosecuting agencies provide them with written notification whenever the prosecuting agency has determined that any of the above has occurred.			
74	All administrative investigations of misconduct allegations conducted pursuant to paragraphs 72 and 73 shall be completed within 90 days from MPD receiving the complaint, or within 90 days from the criminal declination described in paragraph 71, where applicable, absent special circumstances which must be documented. At the conclusion of each such investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the misconduct incident and any other misconduct identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings.	<ol style="list-style-type: none"> 1. OPR and chain of command investigations completed within 90 days of complaint or declination, absent documented special circumstances. 2. OPR and chain of command investigative reports contain required documentation, including <ul style="list-style-type: none"> • description of all misconduct identified during investigation • summary and analysis of all relevant evidence • proposed findings and analysis. 	<ol style="list-style-type: none"> 1. =90% of OPR investigations complete within 90 days of declination, absent documented special circumstances. 2. =95% of OPR reports containing required documentation and information, as specifically set forth in this paragraph. 	<ol style="list-style-type: none"> 1. Review samples of chain of command and OPR investigations.
75	The Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD.	<ol style="list-style-type: none"> 1. Corporation counsel notification of OPR of civil suits alleging MPD employee misconduct. 	<ol style="list-style-type: none"> 1. =95% notification of OPR of civil suits alleging MPD employee misconduct. 	<ol style="list-style-type: none"> 1. Review Corporation Counsel case logs. 2. Review OPR case logs. 3. Review samples of OPR and chain of command misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
76	MPD shall continue to require all officers promptly to notify MPD of the following: the officer is arrested or criminally charged for any conduct; the officer is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity); or the officer is named as a party in any civil suit regarding off-duty conduct (while not acting in an official capacity) that alleges any of the following: physical violence, threats of physical violence, racial bias, dishonesty, or fraud by the officer. Officers shall report this information either directly to OPR or to a supervisor who shall report the information to OPR.	1. Development and distribution of policy requiring prompt notification by officers of specified occurrences.	1. Development and DOJ approval of policies or general orders requiring prompt notification by officers of delineated occurrences. 2. MPD documentation of proper notifications in $\geq 95\%$ of such cases	1. Review policies, procedures, and general orders. 2. Review internal records related to notifications from officers. 3. Review training regarding these reporting obligations.
77	MPD shall require officers to report to MPD without delay: any conduct by other officers that reasonably appears to constitute (a) an excessive use of force or improper threat of force; (b) a false arrest or filing of false charges; (c) an unlawful search or seizure; (d) unlawful discrimination; (e) an intentional failure to complete use of force reports required by MPD policies and in accordance with procedures; (f) an act of retaliation for complying with any MPD policy or procedure; or (g) an intentional provision of false information in an MPD or OCCR investigation or in any official report, log, or electronic transmittal of information. Officers shall report such alleged misconduct by fellow officers either directly to OPR or to a supervisor who shall report the information to OPR. This requirement applies to all officers, including supervisors and managers who learn of evidence of possible misconduct through their review of an officer's work. Failure to voluntarily report as described in this paragraph shall be an offense subject to discipline if sustained.	1. Development and distribution of policy requiring prompt notification by officers of suspected officer misconduct.	1. Development and DOJ approval of policy or general order requiring prompt notification by officers of suspected officer misconduct. 2. Distribution of policy or general order regarding reporting of suspected officer misconduct. 3. Implementation of new recruit and in-service training regarding the reporting of suspected officer misconduct. 4. Such acts of misconduct reported in $\geq 95\%$ of cases in which evidence comes to officer or supervisor's attention.	1. Review FIT investigations. 2. Review samples of misconduct investigations. 3. Review citizen complaints and OCCR investigations. 4. Review civil suits filed against MPD officers. 5. Review new recruit and in-service training regarding these reporting obligations. 6. Review disciplinary files.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
78	The City shall in fiscal year 2002 provide all necessary funds to fully implement paragraphs 68 and 74. Misconduct investigation responsibilities shall be transitioned as positions are filled. Prior to positions being filled, investigation responsibilities shall be transitioned commensurate with available resources. Positions shall be filled and investigation responsibility transition shall be completed by December 31, 2002.	<ol style="list-style-type: none"> 1. City must provide all available funds to permit OPR to conduct all investigations of specified criminal misconduct and to complete such investigations within 90 days. 2. Transition of investigations to OPR completed by December 31, 2002. 	<ol style="list-style-type: none"> 1. Transition of investigations to OPR completed by December 31, 2002 2. Devotion of resources sufficient for OPR to conduct and complete specified investigations within 90 days. 3. =95% of OPR investigations complete within 90 days of declination, absent documented special circumstances. 	<ol style="list-style-type: none"> 1. Review OPR staffing levels. 2. Review OPR needs assessments. 3. Interviews with OPR investigators.
79	OPR shall continue to review all misconduct complaints as they are received. OPR shall determine whether a misconduct complaint meets the criteria (set forth in paragraphs 72 and 73) for being assigned for investigation outside of the District Chain of Command.	<ol style="list-style-type: none"> 1. OPR review misconduct allegations and determine whether assignment to chain of command appropriate. 	<ol style="list-style-type: none"> 1. OPR review of all misconduct complaints received. 2. =95% of cases referred to appropriate investigative body. 	<ol style="list-style-type: none"> 1. Review OPR case assignment documents. 2. Review OPR case assignment policies and procedures. 3. Review samples of misconduct investigations.
80	MPD shall prohibit any officer who has a potential conflict of interest related to a pending misconduct investigation from participating in any way in the conduct or review of that investigation.	<ol style="list-style-type: none"> 1. Development and distribution of policy prohibiting officers with a potential conflict from participating in the investigation. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of policy or general order prohibiting officers with a potential conflict of interest from participating in the investigation. 2. =95% of misconduct investigations reflect no conflicts of interest. 	<ol style="list-style-type: none"> 1. Review policies, general orders, and manuals. 2. Review samples of misconduct investigations.
81	In conducting administrative misconduct investigations (whether conducted by FIT, Chain of Command, or OPR, following a criminal declination, where applicable) MPD shall, subject to and in conformance with applicable law, at a minimum:	<ol style="list-style-type: none"> 1. MPD investigations shall involve, at a minimum, the items specified in ¶¶ 81(a)-(g). 	<ol style="list-style-type: none"> 1. =95% of misconduct investigations follow procedures specified in ¶¶ 81(a)-(g). 	<ol style="list-style-type: none"> 1. Review investigative policies, general orders and manuals. 2. Review FIT investigations. 3. Review samples of OPR and chain of command misconduct investigations. 4. Interviews with citizen complainants.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
a	tape record or videotape interviews of complainants, involved officers, and material witnesses in investigations involving a serious use of force or serious physical injury (if a complainant or non-officer witness refuses to be tape recorded or videotaped, then MPD shall prepare a written narrative of the statement to be signed by the complainant or non-officer witness);			
b	whenever practicable and appropriate, interview complainants and witnesses at sites and times convenient for them, including at their residences or places of business;			
c	prohibit group interviews;			
d	notify the supervisors of the involved officers of the investigation, as appropriate;			
e	interview all appropriate MPD officers, including supervisors;			
f	collect, preserve, and analyze all appropriate evidence, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate; and			
g	identify and report in writing all inconsistencies in officer and witness interview statements gathered during the investigation.			
82	In conducting misconduct investigations, MPD shall continue to assess the propriety of all officer conduct during the incident in which the alleged misconduct occurred. If during the course of an investigation the investigator has reason to believe that misconduct occurred other than that alleged, the investigator also shall investigate the additional potential misconduct to its logical conclusion.	1. Development and distribution of policy requiring that evidence of misconduct other than that alleged be investigated.	1. Development and DOJ approval of policy requiring that evidence of misconduct other than the allegation that prompted the investigation also be investigated. 2. In =95% of cases indicating evidence of unalleged misconduct, such misconduct is investigated.	1. Review policies, general orders and manuals. 2. Review FIT investigations. 3. Review samples of misconduct investigations. 4. Review OCCR investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
83	Within 120 days from the effective date of this Agreement, MPD shall develop a manual, subject to approval by DOJ, for conducting all MPD misconduct investigations. The manual shall include timelines and shall provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports.	1. Development and distribution of manual, approved by DOJ, regarding conduct of misconduct investigations including <ul style="list-style-type: none"> • Timelines • Investigative templates • Guidance re witness interviews • Guidance re investigative reports 	1. Development and distribution of DOJ approved misconduct investigations manual. 2. In-service training that appropriately and completely trains MPD personnel regarding the Misconduct Investigations Manual.	1. Review misconduct investigations manual, including related templates. 2. Monitor investigator training.
84	Within 90 days from the effective date of this Agreement, MPD shall develop a plan, subject to approval by DOJ, to ensure that all MPD investigators (whether conducting use of force investigations or misconduct investigations) receive adequate training to enable them to carry out their duties. All MPD investigators shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism. MPD shall provide specialized training to investigators who conduct shooting investigation. The training shall occur within 180 days of the approval of the plan.	1. Development and distribution of a DOJ approved plan for training investigators including in the following areas: <ul style="list-style-type: none"> • use of force and use of force reporting; • canine deployment; • transporting individuals in custody; • restraints, arrests; • report writing; • investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; • cultural sensitivity; • ethics; • integrity; and • professionalism. 	1. Development and distribution of a DOJ approved plan for investigator training. 2. Development of in-service training and re-training programs focusing on use of force investigations, including in the delineated areas. 3. Certification of attendance at investigative training on at least annual basis by $\geq 95\%$ of all MPD officers and supervisors who conduct misconduct and use of force investigations.	1. Review of in-service training programs and curricular materials. 2. Review in-service training attendance records. 3. Review investigator training records.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	IV. RECEIPT, INVESTIGATION, AND REVIEW OF MISCONDUCT ALLEGATIONS			
	A. Coordination and Cooperation Between MPD and OCCR			
85	Within 60 days from the effective date of this Agreement, the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB).	1. Development of a plan, in consultation with DOJ, that delineates the roles and responsibilities of OCCR and MPD in the receipt, investigation and review of complaints.	1. Development and implementation of a DOJ approved written policy that, at a minimum, specifies: <ul style="list-style-type: none"> • each agency's responsibility for receiving, recording, investigating and tracking complaints; • each agency's responsibility for community outreach and education; • exchange of information and referrals; • role and responsibilities of MPD officials on the CCRB. 2. Operations and activities of MPD and OCCR consistent with written plan. 3. ≥95% of cases handled consistently with allocation of roles and responsibilities specified in written plan.	1. Review MPD policies, general orders, and manuals related to conduct of misconduct investigations. 2. Review OCCR policies and manuals related to the investigation of citizen complaints. 3. Review agreements and MOUs between MPD and OCCR. 4. Review samples of MPD misconduct investigations. 5. Review samples of OCCR investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
86	The City shall provide OCCR sufficient qualified staff, funds, and resources to perform the functions required by this Agreement and by District of Columbia Law 12-208 creating OCCR, including the conduct of timely, thorough, and independent investigations of alleged police misconduct; the conduct of mediation; the conduct of hearings; and the operation of a professional office.	1. Sufficient resources to OCCR to conduct timely, thorough and independent misconduct investigations, mediation, hearings, and operation of a professional office.	1. ≥90% OCCR investigations completed within 90 days absent documented special circumstances. ¹ 2. Development and implementation by OCCR of systems and procedures for conducting investigations, mediation, and hearings.	1. Review OCCR policies and procedures. 2. Review samples of OCCR investigations. 3. Review OCCR docket. 4. Monitor OCCR mediation and hearings. 5. Review CCRB decisions.
	B. Public Information and Outreach			
87	MPD shall continue to require all officers to provide their name and identification number to any person who requests it.	1. All officers provide name and identification numbers to persons who request the information	1. Officers provide names and identification numbers in ≥95% of instances in which request is made.	1. Review citizen complaints. 2. Review chain of command use of force and misconduct investigations. 3. Interviews with MPD officers. 4. Monitoring of citizen complaint process.

¹ The substantial compliance standard related to this provision of MOA paragraph 86 is the subject of ongoing discussions between DOJ and OCCR.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
88	Within 90 days of this agreement, the City and MPD shall develop and implement an effective program to inform persons that they may make complaints regarding the performance of any officer. This program shall, at minimum, include the development and distribution of complaint forms, fact sheets, informational posters, and public service announcements describing both the OCCR and MPD complaint processes. The City shall make such materials available in English, Spanish, and other appropriate languages.	<ol style="list-style-type: none"> 1. Development and implementation of effective program to inform persons of right to make complaints regarding officer performance. 2. Program includes distribution of complaint forms, facts sheets, informational posters, and public service announcements describing OCCR and MPD complaint processes. 3. Such materials are available in English, Spanish, and other appropriate languages.. 	<ol style="list-style-type: none"> 1. Development and distribution of complaint forms, fact sheets, informational posters, and public service announcements at ≥95% of MPD facilities, including HQs, District Stations, District substations, libraries, the MPD Web site, etc. 2. A placard (which includes the phone number of MPD's Office of Professional Responsibility) posted at each of above-listed facilities and describes the complaint process. 3. Materials available at above locations in English, Spanish, and other appropriate languages. 4. Materials of sufficient quality to inform persons of their right to make complaints against police officers and processes for doing so. 5. ≥95% of MPD officers understand the complaint process. 	<ol style="list-style-type: none"> 1. Review MPD and OCCR complaint forms, facts sheets, informational posters, public service announcements. 2. Visits to HQs, District facilities, District substations, libraries, and MPD Web site. 3. Monitor in-service training. 4. Interview MPD officers. 5. Discussions with MPD's public relations office. 6. Monitor community outreach meetings.
89	Within 120 days of the effective date of this agreement, the City shall make complaint forms, and informational materials available at OCCR, MPD Headquarters, all MPD District stations and sub-stations, libraries, the internet, and upon request, to community groups and community centers. At each MPD District station and sub-station, MPD shall permanently post a placard describing the complaint process and include the phone number of MPD's Office of Professional Responsibility.	Same as ¶ 89.	Same as ¶89.	Same as ¶ 89.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
90	MPD shall require all officers to carry informational brochures and complaint forms in their vehicles at all times while on duty. MPD shall require all officers to inform persons who object to an officer's conduct that persons have a right to make a complaint. MPD shall prohibit officers from discouraging any person from making a complaint.	<ol style="list-style-type: none"> 1. All officers required to carry informational brochures and complaint forms in their vehicles at all times while on duty. 2. All officers required to inform persons who object to an officer's conduct that persons have a right to make a complaint. 3. MPD prohibits officers from discouraging persons who wish to make a complaint. 	<ol style="list-style-type: none"> 1. ≥95% officers carry informational brochures and complaint forms in vehicles while on duty. 2. Development and implementation of MPD policy requiring officers to inform persons who object to an officer's conduct that persons have a right to make a complaint. 3. Development and implementation of MPD policy prohibiting officers from discouraging persons who wish to make a complaint. 	<ol style="list-style-type: none"> 1. Review citizen complaints. 2. Review sample of OCCR investigations. 3. Review sample of chain of command use of force and misconduct investigations. 3. Discussions with MPD officers. 4. Review policies, training curricula and lesson plans. 5. Conduct complaint process testing. 6. Interview citizen complainants.
91	For the term of this agreement, MPD shall conduct a Community Outreach and Public Information program for each MPD District. The program shall require the following:	<ol style="list-style-type: none"> 1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b. 	<ol style="list-style-type: none"> 1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b. 	<ol style="list-style-type: none"> 1. Review policies and publications related to the Community Outreach and Public Information programs in each of the MPD districts. 2. Monitor community outreach open meetings with the public. 3. Review records documenting the convening of such meetings.
a	to continue at least one open meeting per quarter in each of the patrol service areas for the first year of the Agreement, and one meeting in each patrol service area semi-annually thereafter, to inform the public about the provisions of this Agreement, and the various methods of filing a complaint against an officer. At least one week before such meetings the City shall publish notice of the meeting (i) in public areas, including libraries, schools, grocery stores, community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD website; and (iv) in the primary languages spoken by the communities located in such area.	<ol style="list-style-type: none"> 1. At least one open meeting per quarter in each of the patrol service areas during the first year of the MOA. 2. At least one meeting in each patrol service area semi-annually thereafter to advise the public about the provisions of the MOA and the methods of filing a complaint. 3. Publication of notice of such meetings at least one week in advance made in the manner described by ¶ 91a. 	<ol style="list-style-type: none"> 1. Semi-annual public meetings in ≥95% of the patrol service areas held. 2. ≥95% of public meetings preceded by at least one week notice and made in the manner and locations described by ¶ 91a, including taking into account language and ethnicity of area residents. 	Same as ¶ 91.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
b	the open public meetings described above shall continue to include presentations and information on MPD and MPD operations in order to enhance interaction between officers and community members in daily policing activities.	1. Open public meetings include presentations and information on MPD and MPD operations to enhance interaction between officers and community members.	1. ≥95% of semi-annual public meetings in each of the patrol service areas include information re MPD and MPD operations.	Same as ¶ 91.
	C. Receipt of Complaints			
92	Within 90 days from the effective date of this Agreement, MPD shall make it possible for persons to initiate complaints with MPD in writing or verbally, in person, by mail, by telephone (or TDD), facsimile transmission, or by electronic mail. MPD shall accept and investigate anonymous complaints and complaints filed by persons other than the alleged victim of misconduct. MPD shall ask anonymous and third-party complainants for corroborating evidence. MPD shall not require that a complaint be submitted in writing or on an official complaint form to initiate an investigation.	<p>1. Within 90 days, MPD able to receive citizen complaints in writing, in person, by mail, by telephone (or TDD), by fax, or by e-mail.</p> <p>2. MPD accepts and investigates anonymous complaints and complaints by persons other than the alleged victim.</p> <p>3. MPD asks anonymous and third-party complainants for corroborating evidence.</p> <p>4. MPD does not require complaints be in writing or on an official complaint form.</p>	<p>1. Establishment of citizen complaint infrastructure to receive complaints in writing, in person, by mail, by telephone (or TDD), by fax, or by e-mail.</p> <p>2. Development and implementation of a DOJ approved complaint policy providing that MPD accept anonymous complaints and complaints by persons other than the alleged victim; ask anonymous and third-party complainants for corroborating evidence; and not require complaints be in writing or on an official complaint form.</p>	<p>1. Review MPD policies and procedures.</p> <p>2. Conduct citizen complaint surveys.</p> <p>3. Conduct citizen complaint process testing.</p>

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
93	Within 120 days from the effective date of this Agreement, the City shall institute a 24-hour toll-free telephone hotline for persons to call to make a complaint regarding officer conduct. The hotline shall be operated by OCCR. They City and MPD shall publicize the hotline telephone number on informational materials and complaint forms. The City shall tape record all conversations on this hotline and shall notify all persons calling the hotline of the tape recording. The City shall develop an auditing procedure to assure that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained. This procedure shall include monthly reviews of a random sample of the tape recordings.	<ol style="list-style-type: none"> 1. Within 120 days, implementation of a 24-hour toll-free hotline for receipt of complaints regarding officer conduct. 2. Hotline operated by OCCR. 3. Hotline calls tape recorded and persons calling the hotline notified of tape recording. 4. Development of auditing procedure to ensure calls are handled in the manner prescribed in ¶ 93, including monthly reviews of random samplings of tape recordings. 	<ol style="list-style-type: none"> 1. Implementation of citizen complaint hotline operated by OCCR. 2. ≥95% of hotline calls tape recorded and tape recording disclosed to callers. 3. Development and implementation of auditing procedure, including monthly reviews of random samplings of tape recordings. 	<ol style="list-style-type: none"> 1. Conduct citizen complaint surveys. 2. Conduct hotline testing. 3. Review hotline tape recordings. 4. Review OCCR hotline auditing procedures and monthly hotline reviews.
94	Within 60 days from the effective date of this Agreement, MPD's Office of Professional Responsibility (OPR) shall be responsible for receiving all complaints filed directly with MPD. MPD shall assign and record a control system number for each complaint immediately. All complaints made at MPD locations other than OPR shall be forwarded to OPR within 24 hours, or the next business day. Within 24 hours, or the next business day OPR shall notify OCCR of any complaint alleging any of the following: harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment.	<ol style="list-style-type: none"> 1. Within 60 days, OPR responsible for receiving all complaints filed directly with MPD. 2. Immediate assignment of a control system number for each complaint. 3. Complaints submitted to all MPD locations forwarded to OPR within 24 hours or by the next business day. 4. Within 24 hours or by the next business day, OPR shall notify OCCR of complaints alleging: harassment; unnecessary or excessive use of force; use of insulting, demeaning or humiliating language; and discriminatory treatment. 	<ol style="list-style-type: none"> 1. Development and implementation of policies and procedures related to OPR's handling of complaints filed directly with MPD. 2. ≥95% of complaints filed with MPD immediately assigned CS number. 3. ≥95% of complaints submitted to MPD forwarded to OPR within 24 hours or by the next business day. 4. OCCR notified of ≥95% cases involving complaints involving allegations described in ¶ 94 within 24 hours or by the next business day. 	<ol style="list-style-type: none"> 1. Review OPR policies and procedures. 2. Monitor OPR complaint receipt processes. 3. Review OPR and OCCR complaint files and records. 4. Review samples of misconduct investigations. 5. Conduct complaint process testing.
95	The City shall continue to locate OCCR offices separate from any building occupied by other MPD personnel.	<ol style="list-style-type: none"> 1. OCCR offices located separately from any building occupied by other MPD personnel.. 	<ol style="list-style-type: none"> 1. OCCR offices maintained separately from buildings occupied by MPD personnel. 	<ol style="list-style-type: none"> 1. Visit OCCR offices.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	D. OCCR Misconduct Investigations			
96	Within 90 days from the effective date of this Agreement, the City shall develop and implement a plan, in timely consultation with DOJ and the Monitor, to ensure that the investigative staff of OCCR receive adequate training to enable them to carry out their duties. OCCR investigative staff shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism.	<ol style="list-style-type: none"> 1. Within 90 days, development and implementation of a plan regarding the training of OCCR investigative staff. 2. OCCR staff shall receive training in the areas described in ¶ 96. 	<ol style="list-style-type: none"> 1. Timely development and implementation of a plan regarding the training of OCCR investigative staff. 2. ≥95% of OCCR investigative staff fully trained in areas described in ¶ 96. 	<ol style="list-style-type: none"> 1. Review policies, procedures and lesson plans related to training of OCCR investigators. 2. Monitor OCCR training. 3. Review personnel files of OCCR investigators. 4. Review attendance roster for OCCR training. 5. Review MOU.
97	Within 90 days from the effective date of this Agreement, the City shall develop a manual, in timely consultation with DOJ, for conducting all OCCR complaint investigations. The manual shall include timelines and provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports.	<ol style="list-style-type: none"> 1. Within 90 days, development of a manual regarding the conduct of OCCR complaint investigations that includes the items described in ¶ 97. 	<ol style="list-style-type: none"> 1. Timely development of a DOJ approved manual regarding OCCR complaint investigations including all of the items described in ¶ 97 	<ol style="list-style-type: none"> 1. Review OCCR complaint investigations manual.
	E. Evaluating and Resolving MPD Misconduct Allegations			
98	MPD shall continue to make findings based on a “preponderance of the evidence” standard. Within 90 days, MPD shall develop a policy and training implementing this standard.	<ol style="list-style-type: none"> 1. Development of policy and training implementing the “preponderance of the evidence” standard applicable to MPD misconduct investigations. 	<ol style="list-style-type: none"> 1. Development of DOJ approved policy implementing the “preponderance of the evidence” standard applicable to MPD misconduct investigations. 2. MPD investigators trained to use the “preponderance of the evidence” standard applicable to MPD misconduct investigations. 3. MPD investigators make findings based on “preponderance of the evidence” standard. 	<ol style="list-style-type: none"> 1. Review MPD policies, procedures, and manuals related to misconduct investigations. 2. Review training curricula and lesson plans related to misconduct investigations. 3. Review of samples of MPD misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
99	In each misconduct investigation, MPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There shall be no automatic preference for an officer's statement over a person's statement. MPD shall make efforts to resolve inconsistent statements between witnesses.	1. MPD misconduct investigations consider all relevant evidence and make credibility determinations if feasible. 2. MPD investigators do not give automatic preference to an officer's statement over a person's statement. 3. MPD investigators make efforts to resolve inconsistent statements between witnesses.	1. ≥95% of misconduct investigations consider all relevant evidence and make credibility determinations if feasible. 2. ≥95% of misconduct investigations do not involve automatic preference of officer's statement over citizen's statement. 3. ≥95% of misconduct investigations demonstrate, where appropriate, effort to resolve inconsistent statements between witnesses.	1. Review samples of misconduct investigations.
100	MPD shall resolve each allegation in a misconduct investigation by making one of the following dispositions:	1. MPD resolves each allegation of misconduct by making one of the dispositions defined in ¶¶ 100a -d.	1. ≥95% of misconduct investigations resolved with a disposition of unfounded, sustained, insufficient facts, or exonerated.	1. Review samples of misconduct investigations.
a	"Unfounded," where the investigation determined no facts to support that the incident complained of actually occurred;			
b	"Sustained," where the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;			
c	"Insufficient Facts," where there are insufficient facts to decide whether the alleged misconduct occurred;			
d	"Exonerated," where a preponderance of the evidence shows that the alleged conduct did occur but did not violate MPD policies, procedures, or training.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
101	MPD shall not close any misconduct investigation without rendering one of the dispositions identified above. [100 a. “unfounded” b. “sustained” c. “insufficient facts” d. “exonerated.”] Withdrawal of a complaint or unavailability of the complainant or the victim of the alleged misconduct to make a statement shall not be a basis for closing for an investigation without further attempt at investigation. MPD shall investigate such matters to the extent reasonably possible to determine whether or not the allegations can be resolved.	<ol style="list-style-type: none"> 1. MPD shall not close any misconduct investigation without rendering one of the dispositions identified in ¶¶ 100a-d. 2. Withdrawal of complaint or unavailability of complainant or victim shall not be a basis for closing an investigation without further reasonable attempt at investigation to determine whether allegations can be resolved. 	<ol style="list-style-type: none"> 1. ≥95% of closed investigations include disposition of unfounded, sustained, insufficient facts or exonerated. 2. ≥95% of closed cases involving withdrawal of complaint or unavailability of complainant demonstrate further reasonable investigation and attempt to resolve allegations. 	<ol style="list-style-type: none"> 1. Review sample of misconduct investigations. 2. Interviews with citizen complainants.
102	At the conclusion of each misconduct investigation, the individual responsible for the investigation shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings.	<ol style="list-style-type: none"> 1. At the conclusion of each misconduct investigation, the responsible individual shall prepare a report that shall be included in the investigation file. 2. The final investigation report shall contain: <ul style="list-style-type: none"> • A description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; • A summary and analysis of all relevant evidence gathered during the investigation; and • Proposed findings and analysis supporting the findings. 	<ol style="list-style-type: none"> 1. ≥95% of completed investigations include final report containing: <ul style="list-style-type: none"> • A description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; • A summary and analysis of all relevant evidence gathered during the investigation; and • Proposed findings and analysis supporting the findings. 	<ol style="list-style-type: none"> 1. Review sample of misconduct investigations.
103	MPD shall complete all misconduct investigations within 90 days after receiving the allegations unless the complexity of the case dictates otherwise, or within 90 days from a criminal declination, where applicable.	<ol style="list-style-type: none"> 1. All misconduct investigations shall be completed within 90 days after receipt of the allegations or from a criminal declination, unless complexity of the case dictates otherwise. 	<ol style="list-style-type: none"> 1. ≥90% of misconduct investigations completed within 90 days after receipt of the allegations or from a criminal declination, unless file indicates complexity of case dictated otherwise. 	<ol style="list-style-type: none"> 1. Review sample of misconduct investigations.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
104	MPD shall require its Unit Commanders to evaluate all misconduct investigation to identify underlying problems and training needs. After such evaluations, the Unit Commander shall implement appropriate non-disciplinary actions, if any, or make a recommendation to the proper MPD entity to implement such actions. Sustained misconduct allegations will be handled pursuant to the disciplinary policy described in paragraph 105.	<ol style="list-style-type: none"> 1. Unit Commanders shall evaluate all misconduct investigations to identify underlying problems and training needs. 2. After such evaluations, Unit Commanders shall implement or recommend appropriate non-disciplinary actions, if any. 3. Sustained misconduct allegations shall be handled pursuant to the disciplinary procedures described in ¶ 105. 	<ol style="list-style-type: none"> 1. Development and implementation of DOJ approved policies and procedures requiring Unit Commanders to evaluate all misconduct investigations to identify underlying problems and training needs. 2. Development and implementation of DOJ approved policies and procedures requiring Unit Commanders to implement or recommend appropriate non-disciplinary actions following evaluations of misconduct investigations. 3. Development and implementation of disciplinary policies and procedures related to sustained misconduct allegations that are consistent with ¶ 105. 	<ol style="list-style-type: none"> 1. Review policies and procedures related to Unit Commander evaluation of misconduct investigations. 2. Review Unit Commander evaluations of misconduct investigations. 3. Review Unit Commander directives and referrals regarding non-disciplinary actions taken in response to evaluations of misconduct investigations. 4. Discussions with Unit Commanders. 5. Review disciplinary policies and procedures.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	V. DISCIPLINE AND NON-DISCIPLINARY ACTIONS			
105	Within 120 days from the effective date of this Agreement, MPD shall revise and update its disciplinary policy, General Order 1202.1 (Disciplinary Procedures and Processes), subject to the approval of DOJ. The policy shall describe the circumstances in which non-disciplinary action is appropriate. The policy shall describe the circumstances in which District-level discipline or corrective action is appropriate. The policy shall establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the District level. It shall also specify the procedure for notifying complainants in writing of the resolution, including significant dates, general allegations and the disposition.	<p>1. Within 120, revise and update disciplinary policy that:</p> <ul style="list-style-type: none"> • Describes circumstances in which non-disciplinary action is appropriate. • Describes circumstances in which District-level discipline or corrective action is appropriate. • Establishes a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at District level. • Specifies the procedure for notifying complainants in writing of the resolution, including significant dates, the general allegations and the disposition. 	<p>1. Development and implementation of DOJ approved revised and updated disciplinary policies and procedures that:</p> <ul style="list-style-type: none"> • Describes circumstances in which non-disciplinary action is appropriate. • Describes circumstances in which District-level discipline or corrective action is appropriate. • Establishes a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at District level. • Specifies the procedure for notifying complainants in writing of the resolution, including significant dates, the general allegations and the disposition. 	<p>1. Review disciplinary policies and procedures.</p> <p>2. Review sample of misconduct investigations.</p> <p>3. Review MPD disciplinary records.</p> <p>4. Review officer personnel files, including district level records.</p> <p>5. Interviews of citizen complainants.</p>

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	VI. PERSONNEL PERFORMANCE MANAGEMENT SYSTEM			
106	PPMS: The computerized data shall be used regularly and affirmatively by MPD to promote civil rights integrity and best professional police practices; to manage the risk of police misconduct, and potential liability thereof; and to evaluate and audit the performance of MPD officers of all ranks, and MPD units, sub-units, and shifts. It shall be used to promote accountability and proactive management and to identify, manage, and control at-risk officers, conduct, and situations. This system shall be a successor to, and not simply a modification of, MPD's existing automated systems.			
107	PPMS shall contain information at minimum on the following matters:	NA	NA	NA
a	all uses of force that are required to be reported in MPD "Use of Force Incident Report" forms or otherwise are the subject of a criminal or administrative investigation by the Department;	1. PPMS includes information on all uses of force requiring UFIR or serving as a basis for a criminal/ administrative investigation.	1. Uses of force requiring UFIR entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Uses of force subject to criminal or administrative investigation entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review UFIRs. 2. Review PAMS database. 3. Review FIT investigations. 4. Review samples of chain of command and OPR use of force and misconduct investigations. 5. Review use of force statistics 6. Review canine unit deployment database.
b	all instances in which a police canine is deployed to search for or find a member of the public;	1. PPMS includes information on all canine deployments to search for a member of the public.	1. Canine deployments to search for member of the public entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review canine unit deployment database. 2. Review UFIRs. 3. Review FIT investigations. 4. Review samples of chain of command and OPR use of force and misconduct investigations. 5. Review use of force statistics 6. Review PAMS database.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
c	all officer-involved shootings and firearms discharges, both on-duty and off-duty;	1. PPMS contains information on all off-duty and on-duty shootings and firearms discharges by officers.	1. On- and off-duty shootings and firearms discharges involving officers entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review UFIRs. 2. Review FIT investigations. 3. Review use of force statistics. 4. Review PAMS database.
d	all other lethal uses of force;	1. PPMS contains information on all lethal uses of force.	1. Lethal uses of force correctly entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review canine unit deployment database. 2. Review UFIRs. 3. Review FIT investigations. 4. Review use of force statistics. 5. Review PAMS database.
e	all studies, reviews, or determinations with respect to the criminal, administrative, tactical, strategic, or training implications of any use of force, including all preliminary and final decisions regarding whether a given use of force was or was not within MPD policy;	1. PPMS contains information on all studies, reviews, or determinations with respect to criminal, administrative, tactical, strategic, or training implications of any use of force (including preliminary and final decisions regarding whether a given use of force was or was not within MPD policy).	1. Such studies, reviews, determinations, and decisions entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review use of force statistics. 2. Review MPD studies, reviews, determinations. 3. Review data from disciplinary review board. 4. Review DDRO database. 5. Review data from Personnel Management Office, OPR, OCCR, DDRO, and chain of command databases.
f	all vehicle pursuits and traffic collisions;	1. PPMS includes all vehicle pursuits and traffic collisions.	1. Vehicle pursuits and traffic collisions entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review UFIRs and OPR files. 2. Review FIT investigations. 3. Review PAMS database.
g	all complaints (whether made to MPD or OCCR);	1. PPMS includes information on all complaints made to MPD. 2. PPMS includes information on all complaints made to OCCR.	1. Complaints made to MPD recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Complaints made to OCCR correctly recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review OCCR database. 2. Review OPR database. 3. Review OCCR complaint records. 4. Review PAMS database.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
h	with respect to the foregoing clauses (a) through (g), the results of adjudication of all investigations (whether criminal or administrative) and a chronology or other complete historical record of all tentative and final decisions or recommendations regarding discipline, including actual discipline imposed or non-disciplinary action taken;	<ol style="list-style-type: none"> 1. PPMS includes information on all results of adjudication of investigations described in (a) through (g). 2. PPMS includes a complete chronology or historical record of all tentative and final decisions or recommendations regarding discipline. 3. PPMS includes information on all actual discipline imposed or non-disciplinary action against MPD officers. 	<ol style="list-style-type: none"> 1. Results of adjudication of investigations described in (a) through (g) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Chronology or historical record of all tentative and final decisions and recommendations regarding discipline recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Actual discipline imposed or non-disciplinary action taken recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 	<ol style="list-style-type: none"> 1. Review USAO database. 2. Review DDRO database. 3. review data from disciplinary board. 4. Review OPR files. 5. Review OCCR files. 6. Review chain of command files. 7. Review Personnel files. 8. Review PAMS database.
i	all commendations received by MPD about officer performance;	<ol style="list-style-type: none"> 1. PPMS includes information on all commendations on officer performance. 	<ol style="list-style-type: none"> 1. Commendations on officer performance entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 	<ol style="list-style-type: none"> 1. Review personnel files. 2. Review PAMS database.
j	all criminal arrests and investigations known to MPD of, and all charges against, MPD employees;	<p>PPMS includes information on all:</p> <ol style="list-style-type: none"> 1. Criminal arrests of MPD employees; 2. Investigations of MPD employees known to MPD; and 3. Charges against MPD employees. 	<ol style="list-style-type: none"> 1. Criminal arrests recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Investigations known to MPD recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Charges against MPD employees recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 	<ol style="list-style-type: none"> 1. Review USAO database. 2. Review DDRO database. 3. Review OPR files. 4. Review OCCR files. 5. Review chain of command files. 6. Review personnel files. 7. Review PAMS database.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
k	all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers, or agents, resulting from MPD operations or the actions of MPD personnel;	PPMS includes information on all: 1. Criminal proceedings initiated against the City, its officers, or agents resulting from MPD operations or actions of MPD personnel recorded; 2. Civil or administrative filings filed against the City, et al.; and 3. Civil lawsuits served upon the City, et al.	1. Such criminal proceedings against the City, etc. recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Such civil or administrative filings filed against the City, et al., recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Civil lawsuits served upon the City, et al. recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review civil and criminal court dockets. 2. Review USAO files. 3. Review DDRO records. 4. Review OPR files. 5. Review OCCR files. 6. Review chain of command files. 7. Review PAMS database. 8. Review Corporation Counsel records.
l	assignment, and rank history for each officer;	PPMS includes information on: 1. Assignment of each officer; and 2. Rank history of each officer.	1. Assignment of each officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Rank history for each officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review PAMS database.
m	training history;	1. PPMS includes the training history of each officer..	1. Officers' training history recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review training compliance suite. 3. Review canine records. 4. Review PAMS database.
n	all management and supervisory actions taken pursuant to a review of PPMS information, including non-disciplinary actions;	1. Management and supervisory actions taken pursuant to a review of PPMS information (including non-disciplinary actions) recorded in PPMS.	1. Management and supervisory actions taken pursuant to a review of PPMS information (including non-disciplinary actions) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review PPMS database. 2. Review DDRO files. 3. Review chain of command files. 4. Review PAMS database.
o	educational history;	1. Educational history recorded in PPMS.	1. Educational history recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review outside employment database. 3. Review PAMS database.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
p	military service and discharge status;	1. Military service and discharge status recorded in PPMS.	1. Military service and discharge status recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review outside employment database. 3. Review PAMS database. 4. Review military personnel databases.
q	all instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer or that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer; and	PPMS includes information on all: 1. Instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer; and 2. Instances in which MPD is informed by a prosecuting authority that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer.	1. Instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Instances in which MPD is informed by a prosecuting authority that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review USAO records. 2. Review Corporation Counsel files. 3. Review criminal case files. 4. Review personnel files. 5. Review DDRO disciplinary records.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
r	PPMS further shall include, for the incidents included in the database, appropriate additional information about involved officers (e.g., name and badge number), and appropriate information about the involved members of the public (including demographic information such as race, ethnicity, or national origin). Additional information on officers involved in incidents (e.g., work assignment, officer partner, field supervisor, and shift at the time of the incident) shall be determinable from PPMS.	<ol style="list-style-type: none"> For incidents included in PPMS, appropriate additional information about all involved officers (including name and badge number) should be recorded in PPMS. For incidents included in PPMS, appropriate information about involved members of the public (including demographic information) recorded in PPMS. Every officer's work assignments, officer partners, field supervisors, and shifts recorded in PPMS. 	<ol style="list-style-type: none"> Appropriate additional information (e.g., name and badge number) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. Appropriate information about involved members of the public (including demographic information) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. Officers' work assignments, officer partners, field supervisors, and shifts recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 	<ol style="list-style-type: none"> Review officer reports. Review FIT reports. Review personnel files. Review PAMS database.
108	MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan for inputting historical data into PPMS (the "Data Input Plan"). The Data Input Plan shall identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting data, and the responsibility for the input of the data. The Data Input Plan shall include historical data that are up-to-date and complete in PPMS.	<ol style="list-style-type: none"> Development of appropriate Data Input Plan that identifies: <ul style="list-style-type: none"> the data to be included, the means for inputting the data, the specific fields to be included, the past time periods for which information is to be included, the deadlines for including data, and the responsibility for inputting data. Proper training on inputting data according to Data Input Plan. Proper implementation of Data Input Plan. 	<ol style="list-style-type: none"> Development of Data Input Plan that identifies: <ul style="list-style-type: none"> the data to be included, the means for inputting the data, the specific fields to be included, the past time periods for which information is to be included, the deadlines for including data, and the responsibility for inputting data. Submission of plan and approval by DOJ. Data entered into PPMS in accordance with Data Input Plan, including meeting deadlines for entry of data. 	<ol style="list-style-type: none"> Review Data Input Plan. Monitor training regarding inputting data. Monitor implementation of Data Input Plan.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
109	PPMS shall include relevant numerical and descriptive information about each incorporated item and incident, and scanned or electronic attachments of copies of relevant documents. PPMS shall have the capability to search and retrieve (through reports and queries) numerical counts, percentages and other statistical analyses derived from numerical information in the database, listings, descriptive information, and electronic document copies for (a) individual employees, MPD units, and groups of officers, and (b) incidents or items, and groups of incidents or items. PPMS shall have the capability to search and retrieve this information for specified time periods, based on combinations of data fields contained in PPMS (as designated by the authorized user).	<ol style="list-style-type: none"> 1. Relevant numerical and descriptive information (including attachments) about each item/incident included in PPMS. 2. PPMS must be able to run reports/queries that will search for and retrieve the listed information for specified time periods. 	<ol style="list-style-type: none"> 1. All relevant numerical and descriptive information (including attachments) about each item/incident entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 2. PPMS has search capability to run reports/queries that will search for and retrieve the listed information for specified time periods. 	<ol style="list-style-type: none"> 1. Test queries and test requests for reports.
110	Where information about a single incident is entered in PPMS from more than one document (e.g., from a complaint form and a use of force report), PPMS shall use a common control number or other equally effective means to link the information from different sources so that the user can cross-reference the information and perform analyses. Similarly, all personally identifiable information relating to MPD officers shall contain the badge or other employee identification number of the officer to allow for linking and cross-referencing information.	<ol style="list-style-type: none"> 1. PPMS must link different documents and entries related to the incident using a common control number or other equally effective means. 2. PPMS must link all personally identifiable information relating to MPD officers using badge/ID number. 	<ol style="list-style-type: none"> 1. Documents and entries related to a single incident are linked in PPMS via a mechanism such as a common control number at a level of reliability $\geq 95\%$. 2. All personally identifiable information relating to an MPD officer is linked in PPMS via the badge or ID number at a level of reliability $\geq 95\%$. 	<ol style="list-style-type: none"> 1. Review PPMS database.

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111	MPD shall, within 90 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using PPMS, including, but not limited to, supervision and auditing of the performance of specific officers, supervisors, managers, and MPD units, as well as MPD as a whole. The City shall submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.	<ol style="list-style-type: none"> 1. Development of appropriate protocol for using PPMS. 2. Proper training on protocol for using PPMS. 3. Proper implementation of protocol for using PPMS, including distribution of protocol and training. 4. DOJ reviews and approves all proposed modifications to the protocol prior to the implementation of such modifications. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of PPMS protocol. 2. Protocol for using PPMS permits: <ul style="list-style-type: none"> • supervision and auditing performance of specific officers, • supervision and auditing performance of MPD units, supervisors and managers, and • supervision and auditing of MPD as a whole. 4. Implementation of PPMS, including establishment of system and training of personnel, permits: <ul style="list-style-type: none"> • supervision and auditing performance of specific officers, • supervision and auditing performance of MPD units, supervisors and managers, and • supervision and auditing of MPD as a whole. 5. City submits for DOJ approval all proposed modifications to the protocol prior to implementing such modifications. 	<ol style="list-style-type: none"> 1. Review data-entry and use of PPMS. 2. Review training sessions on use of PPMS protocol. 3. Review auditing of performance of specific officers, supervisors, managers, and MPD units. 4. Review communications between DOJ and MPD.
112	The protocol for using PPMS shall include the following provisions and elements:			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
a	The protocol shall require that, on a regular basis, but no less than quarterly, managers, and supervisors review and analyze all relevant information in PPMS about officers under their supervision to detect any pattern or series of incidents that indicate that an officer, group of officers, or an MPD unit under his or her supervision may be engaging in at-risk behavior.	1. At least quarterly, managers and supervisors review and analyze all relevant information in PPMS to detect indications that an officer, group of officers, or an MPD unit may be engaging in at-risk behavior.	1. Establishment of a protocol requiring at least quarterly reviews and analysis by managers and supervisors of information in PPMS for indications of at-risk behavior. 2. Quarterly reviews for at risk behavior and their findings are documented.	1. Review PPMS protocol. 2. Review reports related to quarterly reviews for at-risk behavior.
b	The protocol shall provide that when at-risk behavior may be occurring based on a review and analysis described in the preceding subparagraph, appropriate managers, and supervisors shall undertake a more intensive review of the officer's performance.	1. When potential at-risk behavior is identified, appropriate managers and supervisors undertake a more intensive review of the subject officers' performance.	1. Establishment of a protocol requiring intensive reviews of officer performance by appropriate managers and supervisors performed in all cases where potential at risk behavior is identified. 2. Intensive reviews of officer performance where potential at-risk behavior is identified and their findings are documented.	1. Review PPMS protocol. 2. Review reports related to intensive reviews of officer performance where potential at-risk behavior is identified.
c	The protocol shall require that MPD and managers on a regular basis, but no less than quarterly, review and analyze relevant information in PPMS about subordinate managers and supervisors in their command regarding the subordinate's ability to manage adherence to policy and to address at-risk behavior.	1. At least quarterly review by managers of relevant information in PPMS regarding the ability of subordinate managers and supervisors to manage adherence to MPD's policies and to address at-risk behavior.	1. Establishment of a protocol requiring quarterly reviews and analysis of relevant information in PPMS for ≥95% of subordinate managers and supervisors. 2. Quarterly reviews of subordinate managers and supervisors and their findings are documented.	1. Review PPMS protocol. 2. Review quarterly reviews of subordinate managers and supervisors.
d	The protocol shall state guidelines for numbers and types of incidents requiring a PPMS review by supervisors and managers (in addition to the regular reviews required by the preceding subparagraphs), and the frequency of these reviews.	1. Development of guidelines for the numbers and types of incidents requiring a PPMS review by supervisors and managers and the frequency of these reviews.	1. Establishment of a protocol stating guidelines for the number and types of incidents requiring a PPMS review by a manager or supervisor. 2. Establishment of a protocol; stating guidelines as to the frequency of PPMS reviews by managers and supervisors.	1. Review PPMS protocol. 2. Review guidelines re PPMS reviews by managers and supervisors.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
e	The protocol shall state guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of the information in PPMS required pursuant to this protocol.	1. Development of guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of information in PPMS.	1. Establishment of a protocol stating guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of information in PPMS.	1. Review PPMS protocol. 2. Review guidelines re follow-up actions to be taken by executive, managerial or supervisory personnel based on PPMS reviews.
f	The protocol shall require that managers and supervisors use PPMS information, among other relevant information, in determining when to undertake an audit of an MPD unit or group of officers.	1. Managers and supervisors required to use PPMS information, in addition to other relevant information, in determining when to undertake an audit of an MPD unit or group of officers.	1. Establishment of a protocol requiring managers and supervisors required to use PPMS information, in addition to other relevant information, in determining when to undertake an audit of an MPD unit or group of officers. 2. ≥95% of audits of MPD units or groups of officers include use of PPMS information.	1. Review PPMS protocol. 2. Review documentation related to audits or investigations of MPD units or groups of officers.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
g	<p>The protocol shall require that all relevant and appropriate information in PPMS be taken into account for pay grade advancement, promotion, transfer, and special assignment, and in connection with annual personnel performance evaluations. Supervisors and managers shall be required to document in writing their consideration of any sustained criminal or administrative investigation, adverse judicial finding or significant monetary settlement, in determining when such officer is selected for special assignment, or assignment with increased pay, transfer, promotion, and in connection with annual personnel performance evaluations. For purposes of this paragraph, a special assignment shall include, but not be limited to, assignment as a training officer, assignment to any specialized unit or to OPR.</p>	<ol style="list-style-type: none"> Protocol requires that PPMS information be taken into account for: <ul style="list-style-type: none"> pay grade advancement, promotion, transfer, special assignment (including assignment as a training officer, to any specialized unit, or to OPR), annual personnel performance evaluations. In connection with the above employment actions, supervisors and managers shall document in writing their consideration of: <ul style="list-style-type: none"> any sustained criminal or administrative investigation, and adverse judicial finding or significant monetary settlement, 	<ol style="list-style-type: none"> Establishment and implementation of a protocol requiring that PPMS information be taken into account for: <ul style="list-style-type: none"> pay grade advancement, promotion, transfer, special assignment (including assignment as a training officer, to any specialized unit, or to OPR), annual personnel performance evaluations. Establishment and implementation of a protocol requiring supervisors and managers to document in writing consideration of <ul style="list-style-type: none"> any sustained criminal or administrative investigation, and adverse judicial finding or significant monetary settlement. In ≥95% of the above employment actions, supervisors and managers document in writing consideration of <ul style="list-style-type: none"> any sustained criminal or administrative investigation, and adverse judicial finding or significant monetary settlement. 	<ol style="list-style-type: none"> Review PPMS protocol. Review personnel files. Review PPMS records.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
h	The protocol shall specify that actions taken as a result of information from PPMS shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS.	1. Protocol requires that actions taken as a result of PPMS information shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS.	1. Establishment of a protocol requiring that actions taken as a result of PPMS information shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS. 2. ≥95% of employment or auditing actions that include use of PPMS information reflect consideration of all relevant and appropriate information in addition to PPMS data and avoid selective use of PPMS data.	1. Review PPMS protocol. 2. Review personnel files. 3. Review PPMS records.
i	The protocol shall provide that managers' and supervisors' performance in implementing the provisions of the PPMS protocol shall be taken into account in their annual personnel performance evaluations.	1. Protocol provides that performance of supervisors and managers in implementing PPMS protocol shall be considered in their personnel performance evaluations.	1. Establishment of a protocol requiring that performance of supervisors and managers in implementing PPMS protocol be considered in their personnel performance evaluations. 2. Performance evaluations for ≥95% of supervisors and managers include documented consideration of their performance in implementing the PPMS protocol.	1. Review PPMS protocol. 2. Review managers' and supervisors' personnel files.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
j	The protocol shall provide specific procedures that provide for each MPD officer to be able to review on a regular basis all personally-identifiable data about him or herself in PPMS in order to ensure the accuracy of that data. The protocol also shall provide for procedures for correcting data errors discovered by officers in their review of the PPMS data.	<ol style="list-style-type: none"> 1. Protocol provides specific procedures for officer review on a regular basis of all personally-identifiable information in PPMS to ensure accuracy of data. 2. Protocol establishes procedures for correcting data errors in PPMS discovered by officers. 	<ol style="list-style-type: none"> 1. Establishment of a protocol providing: <ul style="list-style-type: none"> • Procedures for individual officers to regularly review for accuracy information in PPMS related to the individual. • Procedures for correcting data errors in PPMS identified by individual officers. 2. Officers permitted to regularly review all data related to the individual officer. 3. Requests for data changes promptly reviewed and officers receive timely notification of response to request. 4. ≥95% of sustained requests for data changes are made in PPMS. 	<ol style="list-style-type: none"> 1. Review PPMS protocol. 2. Monitor requests for correction of PPMS data.
k	The protocol shall require regular review at no less than quarterly intervals by appropriate managers of all relevant PPMS information to evaluate officer performance citywide, and to evaluate and make appropriate comparisons regarding the performance of all MPD units in order to identify any patterns or series of incidents that may indicate potential liability or other at-risk behavior. These evaluations shall include evaluating the performance over time of individual units, and comparing the performance of units with similar responsibilities.	<ol style="list-style-type: none"> 1. Protocol requires at least quarterly reviews by appropriate managers of PPMS information to: <ul style="list-style-type: none"> • Evaluate officer performance citywide, and • Evaluate and make comparisons regarding the performance of all MPD units to identify indicia of potential liability or at-risk behavior. 	<ol style="list-style-type: none"> 1. Establishment of a protocol requiring at least quarterly reviews by appropriate managers of PPMS information to: <ul style="list-style-type: none"> • Evaluate officer performance citywide, and • Evaluate and make comparisons regarding the performance of all MPD units to identify indicia of potential liability or at-risk behavior. 2. Quarterly reviews of PPMS data performed to evaluate the above issues. 	<ol style="list-style-type: none"> 1. Review PPMS protocol. 2. Review quarterly PPMS reviews of citywide officer performance.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
l	The protocol shall provide for the routine and timely documentation in PPMS of actions taken as a result of such reviews of PPMS information.	1. Protocol provides for the routine and timely documentation in PPMS of actions taken as a result of reviews of PPMS data.	1. Establishment of a protocol requiring the routine and timely documentation in PPMS of actions taken as a result of reviews of PPMS data. 2. ≥95% of actions taken as a result of PPMS information are documented in PPMS within 10 days of the action.	1. Review PPMS protocol. 2. Review PPMS database.
m	The protocol shall require that whenever an officer transfers into a new assignment, the commanding officer shall promptly cause the transferred officer's PPMS record to be reviewed by the transferred officer's watch commander or supervisor.	1. Protocol requires commanding officers to ensure that a transferred officer's PPMS record is reviewed by his new watch commander or supervisor.	1. Establishment of a protocol requiring commanding officers to ensure that a transferred officer's PPMS record is reviewed by his new watch commander or supervisor. 2. ≥95% of transferred officers' PPMS records are reviewed by his new watch commander or supervisor.	1. Review PPMS protocol. 2. Review PPMS database. 3. Review personnel files. 4. Interviews of watch commanders and supervisors.
n	The protocol shall require that all relevant and appropriate information in PPMS shall be considered in connection with the adjudication of misconduct allegations and determinations of appropriate discipline for sustained misconduct allegations.	1. Protocol requires all relevant and appropriate information in PPMS be considered in connection with the adjudication of misconduct allegations and determination of discipline for sustained misconduct allegations.	1. Establishment of a protocol requiring all relevant and appropriate information in PPMS be considered in connection with the adjudication of misconduct allegations and determination of discipline for sustained misconduct allegations. 2. ≥95% misconduct investigations and disciplinary actions reflect consideration of PPMS data.	1. Review PPMS protocol. 2. Review misconduct investigations. 3. Review disciplinary records.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
o	MPD shall train and thereafter hold managers, and supervisors accountable, consistent with their authority, for risk management and for use of PPMS and any other relevant data to address at-risk behavior, to deal with potential or actual police misconduct, and to implement the protocol described above.	<ol style="list-style-type: none"> 1. MPD properly trains managers and supervisors to effectively use PPMS. 2. MPD holds managers and supervisors accountable for risk management and use of PPMS to address at-risk behavior, to deal with misconduct, and to implement the PPMS protocol. 	<ol style="list-style-type: none"> 1. Training fairly, accurately, and properly summarizes principles of use of PPMS. 2. ≥95% of managers and supervisors attend training regarding the use of PPMS. 3. MPD holds managers and supervisors accountable for use of PPMS and implementation of the PPMS protocol. 4. MPD holds managers and supervisors accountable for risk management of officers. 5. ≥95% of managers and supervisors complete training on risk management. 	<ol style="list-style-type: none"> 1. Review PPMS training materials. 2. Review PPMS training courses. 3. Review MPD documents reflecting evaluations of managerial and supervisory performance.
113	The City shall maintain all personally identifiable information about an officer included in PPMS during the officer's employment with MPD and for at least five years thereafter (unless otherwise required by law to be maintained for a longer period). Information necessary for aggregate statistical analysis shall be maintained indefinitely in PPMS. On an ongoing basis, MPD shall enter information in PPMS in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.	<ol style="list-style-type: none"> 1. All personally identifiable information about an officer must be included in PPMS during officer's employment with MPD and for 5 years thereafter (unless otherwise required by law). 2. Information necessary for aggregate statistical analysis must be maintained in PPMS indefinitely. 3. MPD must enter information into PPMS in a timely, accurate, and complete manner, and maintain its security and confidentiality. 	<ol style="list-style-type: none"> 1. All personally identifiable information about an officer included in PPMS with a ≥95% level of completeness and accuracy. 2. Personally identifiable information is maintained for 5 years (unless otherwise required by law). 3. Information must be entered into PPMS within 10 days of its availability with a ≥95% level of accuracy and completeness. 4. Information must be kept secure and confidential. 5. Personnel records for ≥95% of MPD officers present in PPMS. 	<ol style="list-style-type: none"> 1. Review PPMS data. 2. Review personnel files. 3. Review misconduct investigation files. 4. Review disciplinary files.
114	PPMS shall be developed and implemented according to the following schedule:			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
a	Within 60 days of the effective date of this Agreement, subject to approval of DOJ, MPD shall issue the Request for Proposal (RFP).	1. Issue PPMS RFP.	2. PPMS RFP issued.	1. Review PPMS RFP.
b	Within 210 days of the issuance of the RFP, MPD shall select the contractor to create the PPMS.	1. According to modification, select contractor by 9/16/03.	1. Contractor timely selected.	1. MPD correspondence regarding selection of contractor.
c	Within three months of the effective date of this Agreement, MPD shall submit the protocol for using PPMS required by paragraphs 111 and 112 hereof to DOJ for approval. MPD shall share drafts of this document with the DOJ and the Monitor to allow the DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. MPD and DOJ shall together seek to ensure that the protocol receives final approval within 30 days after it is presented for approval.	1. Timely submission of PPMS protocol to DOJ and the OIM.	1. Timely submission of PPMS protocol to DOJ and MPD. 2. DOJ approval of PPMS protocol.	1. Review PPMS protocol.
d	Within 12 months of selecting the contractor pursuant to paragraph 114(b), the City shall have ready for testing a beta version of PPMS consisting of: (i) server hardware and operating systems installed, configured and integrated with MPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the PPMS system.	1. According to modification, City must have beta test version of PPMS (as described) ready on time. 2. DOJ and OIM allowed to test system.	1. Beta test version of PPMS ready on time. 2. DOJ and OIM allowed to participate in beta testing.	1. Monitor beta test version of PPMS.
e	The PPMS computer program and computer hardware shall be operational and fully implemented within 18 months of the selection of the PPMS contractor.	1. According to modification, PPMS must be fully operational on time.	1. PPMS made fully operational on time.	1. Monitor PPMS development and implementation.
115	MPD shall, until such time as PPMS is implemented, and to the full extent reasonable and feasible, utilize existing databases, information and documents for all the purposes set forth herein for use of the PPMS.	1. Use existing databases, information and documents for the purposes set forth for PPMS until PPMS implementation.	1. Data required to be captured by PPMS provisions of MOA are being captured by existing databases, to the extent they are capable of capturing the data..	1. Review PAMS data. 2. Review other databases containing information that will be migrated into PPMS (Training, UPPS/TACIS, LERD, Firearms Testing, Outside Employment, Canine, FIT, DDRO, Medical Services).

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
116	Following the initial implementation of PPMS, and as experience and the availability of new technology may warrant, MPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. MPD shall submit all such proposals for review and approval by DOJ before implementation.	<ol style="list-style-type: none"> 1. Once PPMS is implemented, development of modifications as needed. 2. All proposed modifications reviewed and approved by DOJ before implementation. 	<ol style="list-style-type: none"> 1. 100% of all proposed modifications are submitted to DOJ for review and approval prior to implementation. 	<ol style="list-style-type: none"> 1. Review PPMS data tables and fields, documents, standardized reports, and queries. 2. Review proposed modifications and communications between MPD and DOJ.
117	OPR shall continue to be responsible for developing, implementing, and coordinating MPD-wide risk assessments. OPR shall be responsible for the operation of PPMS, and for ensuring that information is entered into and maintained in PPMS in accordance with this Agreement. OPR further shall provide assistance to managers and supervisors who are using PPMS to perform the tasks required hereunder and in the protocol adopted pursuant hereto, and shall be responsible for ensuring that appropriate standardized reports and queries are programmed to provide the information necessary to perform these tasks.	<ol style="list-style-type: none"> 1. OPR responsible for development, implementation, and coordination of MPD-wide risk assessments. 2. OPR responsible for timely and accurate entry of information into PPMS. 3. OPR provides necessary substantive and technical assistance to managers and supervisors. 4. OPR responsible for ensuring that standardized reports and queries elicit appropriate information. 	<ol style="list-style-type: none"> 1. PPMS protocol approved by DOJ. 2. OPR training fairly, accurately, and appropriately summarizes principles of PPMS protocol. 3. OPR ensures accuracy of information input into PPMS through systematic quality control and periodic audits. 4. Information in PPMS is ≥95% accurate when compared to source document. 5. Audit and quality control tests demonstrate that PPMS generates accurate and complete information in ≥95% of cases. 	<ol style="list-style-type: none"> 1. Review PPMS protocol. 2. Review OPR training materials regarding PPMS. 3. Conduct sampling to determine accuracy and completeness of data entry. 4. Review source documents for information input into PPMS. 5. Review PPMS quality control tests and audits.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	A. Performance Evaluation System			
118	Within 6 months of the effective date of this Agreement, MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan to enhance its new Performance Evaluation System to ensure that annual personnel performance evaluations are prepared for all MPD sworn employees that accurately reflect the quality of each sworn employee's performance, including, but not limited to:	<ol style="list-style-type: none"> 1. Development and DOJ approval of appropriate plan to enhance new Performance Evaluation System. 2. Proper training on plan to enhance Performance Evaluation System. 3. Proper implementation of plan to enhance Performance Evaluation System. 4. Preparation of annual evaluations for MPD sworn employees accurately reflecting quality of employee's performance. 	<ol style="list-style-type: none"> 1. Development and DOJ approval of plan to enhance new Performance Evaluation System. 2. Training fairly, accurately, and appropriately summarizes plan to enhance Performance Evaluation System to provide annual evaluations to sworn MPD employees that accurately reflect each employee's performance. 3. ≥95% of sworn MPD employees receive annual evaluations. 4. ≥95% of annual evaluations of sworn MPD employees address civil rights integrity, adherence to law, and, for supervisors, their review of at risk behavior. 5. ≥95% of annual evaluations accurately reflect the performance of sworn MPD personnel relating to civil rights integrity, adherence to law, and, for supervisors, their review of at risk behavior. 	<ol style="list-style-type: none"> 1. Review plan. 2. Monitor training. 3. Audit evaluation process. 4. Review MPD personnel files.
a	civil rights integrity and the employee's community policing efforts;	Same as ¶118.	Same as ¶118.	Same as ¶118.
b	adherence to law, including but not limited to performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States;	Same as ¶118.	Same as ¶118.	Same as ¶118.
c	with respect to managers, and supervisors, their performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force; arrests, booking, and performance bearing upon honesty and integrity.	Same as ¶118.	Same as ¶118.	Same as ¶118.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	VII. TRAINING			
	A. Management Oversight			
119	Within 30 days of the effective date of this Agreement, MPD shall centrally coordinate and review all use of force training among training components to ensure quality assurance, consistency and compliance with applicable law and MPD policy. MPD shall conduct regular subsequent reviews at least semi-annually and produce a report of such reviews to the Monitor and DOJ. Any substantive changes to use of force training must have prior approval of the Director of Training.	<ol style="list-style-type: none"> 1. Centrally coordinated review of all use of force training components. 2. MPD semi-annual reviews of use of force training and issuance of reports to OIM and DOJ. 3. Director of Training approval of substantive changes. 	<ol style="list-style-type: none"> 1. Performance of a centrally coordinated review of all use of force training components. 2. Performance of semi-annual reviews of use of force training and issuance of reports to the OIM and DOJ within a reasonable time after each review. 3. Formal approval by the Director of Training of all substantive changes to the use of force training. 	<ol style="list-style-type: none"> 1. Review semi-annual use of force training review reports. 2. Review training manuals, curricula, and lessons plans. 3. Monitor training sessions.
120	MPD shall continue to have all training materials reviewed by General Counsel or other legal advisor.	<ol style="list-style-type: none"> 1. Review of all training materials by legal advisor. 	<ol style="list-style-type: none"> 1. All training materials in use by MPD reviewed by legal advisor for consistency and compliance with applicable law and MPD policy. 2. Procedures implemented to provide for legal advisor's review of all new and revised training materials prior to their introduction. 	<ol style="list-style-type: none"> 1. Review semi-annual use of force training review reports. 2. Review records reflecting review by MPD General Counsel or other legal advisor. 3. Interview with MPD General Counsel or other legal advisor.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
121	With respect to MPD- sponsored training, MPD Director of Training shall continue, in coordination with the Curriculum Development Specialist (CDS), and MPD Training Task Force to:	Director of Training, in coordination with the CDS and MPD Training Task force, shall be responsible for:	<ol style="list-style-type: none"> 1. Staffing of Director of Training and Curriculum Development Specialist positions and offices. 2. Procedures for the coordination between Director of Training and the CDS. 3. Policies and procedures for the office of the Director of Training setting forth, defining, and implementing the responsibilities identified in ¶¶ 121a -g. 	<ol style="list-style-type: none"> 1. Review records prepared and maintained by the Director of Training and the Curriculum Development Specialist. 2. Review policies, general orders, directives or procedures re the coordination between Director of Training and the CDS and Training Task Force. 3. Review policies, general orders, directives or procedures re the operations and duties of the office of the Director of Training. 4. Review curricula, reports, evaluations, and assessments prepared and issued by the offices of the Director of Training and Curriculum Development Specialist. 5. Review files of the office of the Director of Training and the Curriculum Development Specialist. 6. Review training records of FTOs. 7. Review records of recruit training assignments. 8. Review instructor training rosters. 9. Monitor instructor certification training. 10. Participate in ride-alongs with FTOs. 11. Review evaluations of probationary officers. 12. Interview probationary officers.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
a	oversee and ensure the quality of all use of force training by all trainers, wherever it occurs: academy, in-service, field, roll call and the firearms range;	1. Oversight of all use of force training.	1. Director of Training oversight of all use of force training and trainers.	Same as ¶ 121.
b	develop and implement use of force training curricula;	1. Development and implementation of use of force training curricula.	1. Director of Training oversight and approval of the development and implementation of use of force training curricula.	Same as ¶ 121.
c	select and train MPD officer trainers;	1. Selection and training of MPD officer trainers.	1. Director of Training oversight and approval of the selection and training of MPD officers. 2. ≥95% FTOs attend training for MPD trainers.	Same as ¶ 121.
d	develop, implement, approve and supervise all in-service training and roll call curricula;	1. Development, implementation, approval and supervision of all in-service and roll call curricula.	1. Director of Training oversight, approval and supervision of the development and implementation of all in - service training and roll call curricula.	Same as ¶ 121.
e	establish procedures for evaluating all training (which shall include an evaluation of instructional content and the quality of instruction;	1. Establish procedures for evaluating training and instruction.	1. Director of Training establishment and approval of training evaluation procedures.	Same as ¶ 121.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
f	MPD shall continue its Field Training program. Within 120 days of the effective date of this Agreement, MPD shall develop a protocol, subject to approval by DOJ, to enhance the Field Training program. The protocol shall address the criteria and method for selecting Field Trainers, the training provided to Field Trainers to perform their duties, the length of time that probationary officers spend in the program, the assignment of probationary officers to Field Trainers, the substance of the training provided by the Field Trainers, and the evaluation of probationary officer performance by Field Trainers.	<ol style="list-style-type: none"> 1. Within 120 days, development of protocol to enhance Field Training program, including: <ul style="list-style-type: none"> • Criteria for selecting Field Trainers. • Training of Field Trainers. • Time probationary officers spend in program. • Assignment of probationary officers to Field Trainers. • Evaluation of probationary officers by Field Trainers. 	<ol style="list-style-type: none"> 1. Timely development of a protocol related to the Field Training program addressing: <ul style="list-style-type: none"> • Criteria for selecting Field Trainers. • Training of Field Trainers. • Time probationary officers spend in program. • Assignment of probationary officers to Field Trainers. • Evaluation of probationary officers by Field Trainers. 2. 100% of probationary officers participate in field training program upon completion of Academy training. 3. 100% of FTOs conducting field training are certified. 	Same as ¶ 121.
g	conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.	<ol style="list-style-type: none"> 1. Regular needs assessments related to use of force training. 	<ol style="list-style-type: none"> 1. Director of Training oversight of regular needs assessments related to use of force training. 	Same as ¶ 121.
122	The CDS shall prioritize his/her efforts to focus on use of force curriculum and instructor development. The CDS shall within 180 days of the effective date of this Agreement, review, revise, provide written approval, and implement, subject to DOJ's approval, all current force-related training material (including curricula and lesson plans), as well as subsequent changes, to ensure:	<ol style="list-style-type: none"> 1. Within 180 days, CDS review, revision and approval of all existing force-related training material, including curricula and lesson plans, to ensure: <ul style="list-style-type: none"> • Consistency in content and format. • Incorporation of current law and policy. • Clear learning objectives and suggestions to trainers. • Appropriateness of training aids. 	<ol style="list-style-type: none"> 1. Timely review, revision and approval by the CDS of all force-related training material in existence at the effective date of the MOA to ensure the requirements of ¶¶ 122a-d are met. 2. Timely review, revision and approval by CDS of all changes in force-related training materials. 	<ol style="list-style-type: none"> 1. Review records prepared and maintained by the CDS. 2. Review of use of force-related training material, including curricula and lesson plans. 3. Monitoring of force-related training courses.
a	internally consistent content and format;			
b	incorporation of current law and policy requirements;			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
c	the presence of clear, behaviorally-anchored learning objectives and suggestions for trainers of how to present material effectively; and			
d	the appropriateness of proposed training aids.			
123	The CDS shall regularly review, at a minimum every quarter, all force related training for quality assurance and consistency and shall regularly audit training classes.	<ol style="list-style-type: none"> 1. CDS regularly reviews, at least quarterly, all use of force related training. 2. Regular audits by the CDS of training classes. 	<ol style="list-style-type: none"> 1. Preparation of quarterly reviews by the CDS of all force-related training concerning quality and consistency of training. 2. Documented regular audits by the CDS of training classes. 	<ol style="list-style-type: none"> 1. Review CDS quarterly reviews of force-related training. 2. Review CDS audits and evaluations of training classes.
124	MPD shall continue to enhance its procedures to provide adequate record keeping of lesson plans and other training material such that the most current, supervisory approved training documents are maintained in a central, commonly accessible file, and are clearly dated.	<ol style="list-style-type: none"> 1. Training program record keeping improved to establish: <ul style="list-style-type: none"> • Central, commonly accessible file for lesson plans and training materials. • Training materials clearly dated. 	<ol style="list-style-type: none"> 1. Establishment of a central, commonly accessible file room for lesson plans and training materials. 2. ≥95% of training materials clearly dated and readily accessible. 	<ol style="list-style-type: none"> 1. Review training materials located in central file. 2. Review training materials, including lesson plans and curricula.
125	MPD shall continue to maintain training records regarding every MPD officer which reliably indicate the training received by each officer. The training records shall, at a minimum include the course, curriculum, instructor, and day and tour delivered for each officer.	<ol style="list-style-type: none"> 1. Maintenance of training records for every MPD officer, which include course, curriculum, instructor, and day and tour delivered. 	<ol style="list-style-type: none"> 1. Maintenance of current and complete training records for ≥95% of MPD officers. 	<ol style="list-style-type: none"> 1. Review samples of training records. 2. Periodic review of Training Management System.
	B. Curriculum			
126	The parties agree that sound critical thinking and decision making skills are critical to reducing use of excessive force and to ensuring officer safety. Accordingly, MPD shall ensure that all force-related training incorporates, in a coherent manner, critical thinking and decision making instruction, applicable law, and MPD policy.	<ol style="list-style-type: none"> 1. MPD force-related training curricula shall incorporate critical thinking and decision making instruction, applicable law and MPD policy. 	<ol style="list-style-type: none"> 1. 100% of force-related training programs and curricula adequately incorporate critical thinking, decision-making instruction, applicable law and MPD policy. 	<ol style="list-style-type: none"> 1. Review force-related training curricula and lesson plans. 2. Monitor training sessions.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
127	MPD shall continue to provide all MPD recruits, officers, supervisors and managers with annual training on use of force, subject to approval by DOJ. Such training shall include and address, inter alia:	1. Annual training on use of force for all recruits, officers, supervisors, and managers, addressing: <ul style="list-style-type: none"> • Use of force continuum. • Use of force reporting requirements. • Fourth Amendment requirements. • Examples of use of force dilemmas and interactive exercises. 	1. ≥95% of active MPD personnel in each of the categories of recruits, officers, supervisors and managers attend annual training on use of force that includes and addresses the issues identified in ¶¶ 127a-d. 2. DOJ approval of annual use of force training.	1. Review force-related training curricula and lesson plans. 2. Monitor training sessions. 3. Review sample of training records.
a	MPD's use of force continuum;			
b	MPD's use of force reporting requirements;			
c	the Fourth Amendment and other constitutional requirements;			
d	examples of use of force and ethical dilemmas faced by MPD officers and, where practicable given the location, type, and duration of the training, interactive exercises for resolving use of force dilemmas shall be utilized.			
128	MPD shall continue to provide recruits, officers, supervisors, and managers with training in cultural diversity and community policing, which shall include training on interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons of different sexual orientations, and persons with disabilities.	1. Training for recruits, officers, supervisors, and managers in cultural diversity and community policing.	1. ≥95% of active MPD personnel in each of the categories of recruits, officers, supervisors and managers attend annual training re cultural diversity and community policing.	1. Review force-related training curricula and lesson plans. 2. Monitor training sessions. 3. Review sample of training records. 4. Review training class rosters.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
129	MPD shall provide all supervisors, (officers with the rank of sergeant and above) with mandatory supervisory and leadership training which, in addition to the subjects addressed in paragraphs 127 and 128, shall teach command accountability and responsibility, interpersonal relationship skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity, including the prevention and detection of use of excessive force, throughout the supervisor's command responsibility and which include proper supervisor/employee communication skills. MPD shall prioritize the topics covered in the initial training to focus on MPD's new use of force policies and procedures, new Canine policies and procedures, the new Use of Force Review Board, and revised administrative and misconduct investigation policies and procedures; MPD shall provide initial training on these topics within 180 days from execution of this Agreement and thereafter shall provide supervisory training on an annual basis.	<ol style="list-style-type: none"> 1. Sergeant and above training addressing: <ul style="list-style-type: none"> • Requirements of ¶¶ 127 and 128. • Command accountability and responsibility. • Interpersonal relationship skills. • Theories of motivation and leadership. • Techniques to promote proper police practices and integrity. 2. Within 180 days, initial training on: <ul style="list-style-type: none"> • New use of force policies and procedures. • New canine policies and procedures. • New Use of Force Review Board. • Revised administrative and misconduct investigation policies and procedures. 3. Annual supervisory training. 	<ol style="list-style-type: none"> 1. ≥95% of active MPD supervisors attend sergeants annual sergeants and above training incorporating the requirements of ¶¶ 127-29. 2. ≥95% of active MPD supervisors attend sergeants and above initial training re new policies and procedures related to use of force, canines, UFRB, and administrative and misconduct investigations. 	<ol style="list-style-type: none"> 1. Review sergeants and above training curricula and lessons plans. 2. Monitor sergeants and above training sessions. 3. Review sample of training records.
130	MPD shall ensure that training instructors engage students in meaningful dialogue regarding "real-life" experiences involving use of force and applicable law and MPD policy when conducting force-related training. Training instructors shall encourage opportunities to explain MPD's use of force policy, reporting requirements and force-related law throughout all use of force training.	<ol style="list-style-type: none"> 1. Training engage students in dialogue re "real life" experiences involving use of force, applicable law and MPD policy. 	<ol style="list-style-type: none"> 1. Training engage students in dialogue re "real life" experiences involving use of force, applicable law and MPD policy. 	<ol style="list-style-type: none"> 1. Review use of force training curricula and lesson plans. 2. Monitor use of force training sessions, including new recruit training.
131	MPD shall ensure that training time is used in an efficient and productive manner and shall take effort to eliminate "down time" of student officers during recruit and in-service training by providing a variety of use of force training activities for students awaiting required one-to-one student-teacher training.	<ol style="list-style-type: none"> 1. Efficient use of training time to eliminate "down time." 	<ol style="list-style-type: none"> 1. Efficient use of training time to eliminate "down time." 	<ol style="list-style-type: none"> 1. Review use of force training curricula and lesson plans. 2. Monitor use of force training sessions.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
132	Role Play and Range 2000 Courses			
a	Within 60 days of the effective date of this Agreement, MPD shall review the Role Play (formerly known as “Simmunitions”) and the Range 2000 training courses to ensure consistency with the law and MPD policy. MPD shall immediately develop a standardized curriculum, lesson plan and instructional guidelines with a list of each scenario including the title, content, lesson objectives and, for the Range 2000, the possible variations available, and shall include a checklist of items to address when critiquing students to ensure consistent application and efficient training. The curriculum, lesson plan and instructional guidelines shall be reviewed by the CDS and MPD General Counsel to ensure consistency with the law and MPD policy, and submitted to DOJ for approval.	<ol style="list-style-type: none"> 1. Within 60 days, review Role Play and Range 2000 training to ensure consistency with the law and MPD policy. 2. Development of a standardized curriculum, lesson plan and instructional guidelines for Range 2000. 3. Checklist to ensure consistent application and efficient Range 2000 training. 4. CDS and General Counsel review of lesson plan and instructional guidelines to ensure consistency with law and MPD policy. 	<ol style="list-style-type: none"> 1. Timely review of Role Play and Range 2000 training courses and consistency of these courses with law and MPD policy. 2. Development and implementation of a standardized curriculum, lesson plan and instructional guidelines for Range 2000 that include the items required in ¶ 132a. 3. Development and implementation of a checklist for the critiquing of students training on the Range 2000. 4. CDS and General Counsel (or legal advisor) review of Range 2000 curriculum, lesson plan and instructional guidelines. 	<ol style="list-style-type: none"> 1. Review Role Play and Range 2000 curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play and Range 2000 training sessions. 3. Monitor the office of the CDS. 4. Review evidence of CDS and General Counsel (or legal advisor) review.
b	MPD shall allow sufficient time to ensure that every student officer participates in one or more Role Plays. Within 180 days of the effective date of this Agreement, MPD shall begin videotaping students in order to replay their decisions and actions during the critique portion of the courses. MPD shall have instructors challenge students to comply with applicable legal standards and MPD policy. Videotapes shall not be subject to the retention policy described in paragraph 176.	<ol style="list-style-type: none"> 1. Every student officer participates in one or more role plays during training session. 2. Within 180 days, MPD shall videotape students on course and use videotapes to critique students. 	<ol style="list-style-type: none"> 1. Every student officer participates in one or more Role Plays during training session. 2. Timely implementation of procedures for videotaping students participating in Role Plays and using videotapes to critique students. 	<ol style="list-style-type: none"> 1. Review Role Play curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play training sessions. 3. Review sample of videotapes.
c	MPD shall add additional simulations to comport with the training needs assessment and deficiencies identified in use of force investigations, which can either be created by MPD or obtained from other local and federal law enforcement agencies.	<ol style="list-style-type: none"> 1. Add simulations to comport with training needs assessment and deficiencies identified in use of force investigations. 	<ol style="list-style-type: none"> 1. Review by the Director of Training and CDS of training needs assessments and results of use of force investigations. 2. Modification of simulation programs to reflect needs assessment and deficiencies identified in use of force investigations. 	<ol style="list-style-type: none"> 1. Review Role Play curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play training sessions. 3. Review needs assessments. 4. Review use of FIT and chain of command use of force investigations to inform training.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
133	MPD shall, within 120 days, provide copies and explain the terms of this Agreement to all MPD officers and employees in order to ensure that they understand the requirements of this Agreement and the necessity for strict compliance. After MPD has adopted new policies and procedures in compliance with this Agreement, MPD shall provide timely in-service training to MPD officers regarding the new policies and procedures and the relevant provisions of this Agreement. MPD shall incorporate training on these policies and procedures into recruit training at the Academy.	<ol style="list-style-type: none"> 1. Within 120 days, provide copies of the MOA to all MPD officers. 2. Timely in-service training regarding new policies and procedures and relevant provisions of the MOA. 3. Incorporate policies and procedures into new recruit training. 	<ol style="list-style-type: none"> 1. Timely distribution of MOA and explanatory materials to ≥95% of current and new MPD officers and employees. 2. Development of in-service training program regarding policies and procedures related to the MOA. 3. ≥95% of MPD officers attend in-service training regarding policies and procedures related to the MOA. 4. Development and implementation of new recruit training program regarding policies and procedures related to the MOA. 	<ol style="list-style-type: none"> 1. Conduct officer surveys and/or focus groups. 2. Monitor in service and new recruit training curricula and review lesson plans. 3. Monitor in service and new recruit training. 4. Review training class rosters. 5. Monitor videotapes, Q&A sessions and other training regarding the MOA.
	C. Instructors			
134	Within 60 days, MPD shall assess (a) whether there is sufficient staff at the Training Academy; (b) what instructor training is needed in light of the courses currently being taught and those to be taught in the future; and (c) the appropriate standards for the evaluation of instructor performance by supervisors. Based on this assessment, MPD shall develop a plan for addressing training instructor needs. MPD shall submit this assessment and development plan to DOJ for approval.	<ol style="list-style-type: none"> 1. Within 60 days, MPD assess: <ul style="list-style-type: none"> • Sufficiency of staff at Training Academy. • Instructor training necessary in light of current and future courses. • Standards for evaluation of instructor performance. 2. Develop plan for addressing training instructor needs. 	<ol style="list-style-type: none"> 1. Timely assessment regarding sufficiency of training staff, instructor training, and standards for the evaluation of instructors. 2. Development of a plan for addressing training instructor needs. 	<ol style="list-style-type: none"> 1. Review training/instructor assessment and plan.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
135	MPD shall, within 90 days, develop and implement subject to DOJ's approval, formal eligibility and selection criteria for all Academy, Field Training, and formal training (other than roll call) positions. These criteria shall apply to all incumbent officers in these training positions and to all candidates for these training positions, and also shall be used to monitor the performance of persons serving in these positions. The criteria shall address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct; history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity.	<ol style="list-style-type: none"> 1. Within 90 days, develop and implement formal eligibility and selection criteria for Academy, Field Training, and formal training (other than roll call) positions. 2. Criteria shall address: <ul style="list-style-type: none"> • Knowledge of MPD policies and procedures • Interpersonal and communication skills. • Cultural and community sensitivity. • Teaching aptitude. • Performance as a law enforcement officer. • Attention to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training, specialized knowledge, and commitment to police integrity. 	<ol style="list-style-type: none"> 1. Timely development of formal eligibility and selection criteria for all Academy, Field Training, and formal training (other than roll call) positions, including each of the criteria listed in ¶ 135. 2. DOJ approval of eligibility and selection criteria for Academy, Field Training, and formal training instructors. 3. Implementation of DOJ approved eligibility and selection criteria for instructors. 4. ≥95% of instructors meet DOJ-approved eligibility and selection criteria. 	<ol style="list-style-type: none"> 1. Review training instructor eligibility requirements and selection criteria. 2. Review position announcements. 3. Monitor instructor training.
136	MPD shall develop an instructor certification program by which the competency of the instructors is certified.	<ol style="list-style-type: none"> 1. Development of instructor certification program. 	<ol style="list-style-type: none"> 1. Development of an instructor certification program. 	<ol style="list-style-type: none"> 1. Review of instructor certification program. 2. Review individual instructor qualifications and certifications.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
137	Within 180 days of the effective date of this Agreement, MPD shall create and implement a formal instructor training course, subject to the approval of DOJ, to ensure that all instructors receive adequate training to enable them to carry out their duties, including training in adult learning skills, leadership, teaching and evaluation, as well as training in fostering group discussions regarding use of force in “real-life” applications and the presentation of training material in a cohesive and engaging manner. MPD shall provide regular and periodic re-training on these topics. All training instructors and Field Trainers shall be required to maintain, and demonstrate on a regular bases, a high level of competence. MPD shall document all training instructors’ and Field Trainers’ proficiency and provide additional training to maintain proficiency.	<ol style="list-style-type: none"> 1. Within 180 days, create a formal instructor training course. 2. Ensure instructors receive adequate training, including: <ul style="list-style-type: none"> • Adult learning skills. • Leadership. • Teaching and evaluation. • Fostering group discussions re use of force in “real life” applications. 3. Regular and periodic re-training. 4. All instructors maintain and demonstrate high level of competence. 5. Document all training instructors’ and Field Trainers’ proficiency and provide additional training. 	<ol style="list-style-type: none"> 1. Timely establishment of a formal instructor training course addressing each of the areas listed in ¶ 137. 2. ≥95% instructor participation in instructor training and re-training. 3. ≥95% instructors demonstrate “high level of competence.” 4. ≥95% of instructors and Field Trainers have regular and current documented evaluations of proficiency. 5. ≥95% of instructors and Field Trainers receive regular additional training. 	<ol style="list-style-type: none"> 1. Review curricula and lesson plans related to instructor training course. 2. Review instructors’ and Field Trainers’ evaluations and personnel files. 3. Monitor instructor and Field Trainer training. 4. Review training class rosters. 5. Review instructor training records.
138	MPD shall ensure adequate management supervision of use of force training instructors to ensure that their training is consistent with MPD policy, the law and proper police practices.	<ol style="list-style-type: none"> 1. Adequate management supervision of use of force training instructors to ensure consistency with MPD policy, the law, and proper police practices. 	<ol style="list-style-type: none"> 1. Instructors and Field Trainers evaluated on training consistency with MPD policy, the law and proper police practices. 2. ≥95% in service and new recruit instructors provide training consistent with MPD policy, law and proper police practices. 	<ol style="list-style-type: none"> 1. Review curricula and lesson plans related to instructor training course. 2. Review instructors’ and Field Trainers’ evaluations and personnel files. 3. Monitor instructor and Field Trainer training. 4. Review CDS semi-annual reports and course evaluation forms.
139	MPD shall ensure consistent and thorough instruction of approved lesson plans. All instructors must have and use a copy of current lesson plans during classroom instruction.	<ol style="list-style-type: none"> 1. Consistent and thorough instruction of approved lesson plans. 2. All instructors have and use current lesson plans. 	<ol style="list-style-type: none"> 1. Approved and current lesson plans are distributed to 100% of all instructors. 2. ≥95% of training sessions use current and approved lesson plans. 	<ol style="list-style-type: none"> 1. Review training curricula and lesson plans. 2. Monitor training sessions.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	D. Firearms Training			
140	MPD shall continue to ensure that all officers, supervisors as well as line staff, complete the mandatory semi -annual re-qualification firearms training. Re -qualification shall consist of more than shooting a passing score, but shall consist of satisfactorily completing all re-qualification courses, as discussed in paragraphs 127 and 128, to include, Range 2000 and Role Play courses. MPD shall continue to revoke the police powers of those officers who fail to satisfactorily complete re-certification. MPD shall centralize administrative consequences of failure to attend re-qualification firearms training to ensure consistent application of such consequences.	<ol style="list-style-type: none"> 1. All officers, supervisors, and line staff complete mandatory semi -annual re-certification firearms training. 2. Re-certification consist of: <ul style="list-style-type: none"> • Passing s shooting score. • Range 2000 and Role Play courses. 3. Revocation of police powers of officers who fail re - certification. 4. Centralize administrative consequences for failure to attend re-certification and ensure consistent application of consequences. 	<ol style="list-style-type: none"> 1. ≥95% of officers, supervisors, and line staff satisfactorily complete semi-annual firearms re-certification training. 2. Re-certification program consists of all required programs, including scored shooting evaluation and participation on Range 2000 and Role Play courses. 3. 100% of officers failing re-certification have police powers revoked. 4. Implementation of a centralized recordkeeping and tracking system for firearms training and re-certification and consistent application of corrective action for failure to satisfactorily complete firearms re-certification training. 	<ol style="list-style-type: none"> 1. Monitor firearms training and re-certification. 2. Monitor firearms training and re-certification recordkeeping and tracking systems. 3. Review firearms re - certification records. 4. Review officers' personnel files.
141	MPD shall ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and the failure to utilize safe gun handling procedures at all times.	<ol style="list-style-type: none"> 1. Firearm instructors critically observe students and provide corrective instruction. 	<ol style="list-style-type: none"> 1. Firearms instructor training includes training on critical observation students and provision of corrective action. 2. Evaluation of firearms instructors' proficiency includes critical observation of students and provision of corrective instruction. 3. ≥95% firearms instructors satisfy the requirements of ¶ 141. 4. No incidents of uncorrected unsafe weapon handling during firearms training and re-certification sessions. 	<ol style="list-style-type: none"> 1. Review evaluations of firearms instructors. 2. Monitor firearms instructor training.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
142	Within 60 days, MPD shall create and implement, subject to DOJ's approval, a checklist identifying evaluation criteria to determine satisfactory completion of firearms recruit and in-service training. Such checklists shall be completed for each student officer by a firearms instructor, who shall sign the checklist indicating that these criteria have been satisfactorily reviewed during training. The checklist shall include, but not be limited to, an evaluation of a student officer successful training of the following:	<ol style="list-style-type: none"> 1. Within 60 days, create and implement a checklist identifying evaluation criteria for firearms recruit and in-service training. 2. Checklist completed for each student officer. 3. Checklist shall include evaluation of following: <ul style="list-style-type: none"> • Finger off trigger unless justified and ready to fire. • Exercise sound judgment and engage in decision making skills in Range 2000 and Role Plays. • Proper firearm hold and stance. 	<ol style="list-style-type: none"> 1. Timely development of checklist for evaluating satisfactory completion of recruit and in service firearms training, including areas listed in ¶¶ 142a-c. 2. Checklist completed for ≥95% of officers receiving firearms training 	<ol style="list-style-type: none"> 1. Review firearms training checklist. 2. Review officer personnel files and firearms certification. 3. Monitor firearms training.
a	maintains finger off trigger unless justified and ready to fire;			
b	exercises sound judgment and engages in decision making skills in Range 200 and Role Plays;			
c	maintains proper hold of firearm and proper stance.			
143	MPD shall immediately review and integrate all firearms training into a training curriculum that ensures material is presented in a logical manner that promotes optimal fire safety and user responsibility.	1. MPD review and integration of all firearms training into training curriculum with logical presentation, optimal fire safety, and user responsibility.	1. Firearms training curriculum is logically presented and promotes optimal fire safety and user responsibility.	<ol style="list-style-type: none"> 1. Review firearm training curricula and lesson plans. 2. Monitor firearms training sessions.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
144	MPD shall regularly, at a minimum every 3 months, consult the manufacturer for accurate, consistent and current information regarding all Glock specific instructions and guidelines, particularly regarding cleaning, maintenance and marksmanship. MPD must establish procedures to ensure that such information is continually updated as necessary and such practices are duly documented.	<ol style="list-style-type: none"> 1. Every three months, consult with manufacturer for accurate, consistent and current information re Glock. 2. Establish procedures to ensure information is updated as necessary and practices are documented. 	<ol style="list-style-type: none"> 1. Implementation of procedures to regularly obtain, at least quarterly, from the manufacturer accurate, consistent and current information on the Glock. 2. Implementation of procedures to ensure information related to the Glock is continually updated. 3. Practices related to the procedures required under paragraph 144 are adequately documented in ≥95% of cases. 	<ol style="list-style-type: none"> 1. Review procedures re consultation with Glock manufacturer. 2. Review documentation related to consultations with Glock manufacturer. 3. Review records related to updated information regarding the Glock. 4. Interview Glock representatives.
	E. Canine Training			
145	MPD shall complete development and implementation of a comprehensive canine training curriculum and lesson plans which specifically identify goals, objectives and the mission of the Canine Unit, consistent with the Canine policy described in paragraphs 44-46 of this Agreement.	<ol style="list-style-type: none"> 1. Complete development and implementation of comprehensive canine curriculum and lesson plans. 2. Curriculum identifies goals, objectives and mission of Canine Unit, consistent with MOA ¶¶ 44-46. 	<ol style="list-style-type: none"> 1. Development and implementation of comprehensive canine curriculum and lesson plans. 2. Curriculum identifies goals, objectives and mission of Canine Unit, consistent with MOA ¶¶ 44-46. 	<ol style="list-style-type: none"> 1. Review canine training curriculum and lesson plans. 2. Monitor canine training program.
146	MPD shall continue to purchase only professionally-bred canines. MPD shall ensure that, within 180 days, all of its canines are certified in handler-controlled alert methodology. MPD shall ensure that the canines receive annual re-certification and periodic refresher training. Deviations from certification or training requirements shall result in the removal of the canine from service until such requirements are fulfilled.	<ol style="list-style-type: none"> 1. Purchase only professionally-bred canines. 2. Within 180 days, ensure all canines are certified in handler-controlled alert methodology. 3. Ensure canines receive annual re-certification and refresher training. 4. Removal of canines from service until training and certification requirements fulfilled. 	<ol style="list-style-type: none"> 1. 100% of canines are professionally-bred. 2. 100% of canines are certified in handler-controlled alert methodology. 3. ≥95% canines receive annual re-certification and refresher training. 4. ≥95% canines in service have fulfilled training and certification requirements. 	<ol style="list-style-type: none"> 1. Review records and certifications for individual canines. 2. Monitor canine re-certification and training.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
147	MPD shall continue to ensure that canine handlers are physically capable of implementing and maintaining the canine policy described in paragraphs 44-46 of this Agreement. Handlers should be able to maintain control of, and contact with the canine to ensure that the canine is not allowed to bite a suspect without a legal justification.	<ol style="list-style-type: none"> 1. Ensure that canine handlers are physically capable of implementing and maintaining canine policy described in MOA ¶¶ 44-46. 2. Handlers able to maintain control of and contact with canines to ensure that canine does not bite without legal justification. 	<ol style="list-style-type: none"> 1. Implementation of evaluation procedures related to the physical capabilities of canine handlers. 2. ≥95% of canine handlers rated capable of implementing and maintaining canine policy described in ¶¶ 44-46. 3. ≥95% of canine handlers rated physically capable of maintaining control of and contact with canines. 	<ol style="list-style-type: none"> 1. Review physical evaluations of canine handlers.
148	Within 180 days, MPD shall require that all of its in-house canine trainers are certified canine instructors.	<ol style="list-style-type: none"> 1. Within 180 days, require all in-house canine trainers are certified canine instructors. 	<ol style="list-style-type: none"> 1. 100% of in-house canine instructors are certified canine instructors. 	<ol style="list-style-type: none"> 1. Review certifications for in-house canine instructors.
	VIII. SPECIALIZED MISSION UNITS			
149	DOJ recognizes that MPD, in its discretion, utilizes temporary and permanent specialized mission units to achieve various law enforcement missions. The following provisions apply to any current or future specialized mission unit created during the existence of this Agreement in which officers engage in significant patrol-related activities on a routine basis including contacts, stops, frisks, and searches (the Mobile Force Unit (is an example of one such specialized mission unit.).	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
150	MPD shall continue to institute adequate pre-screening mechanisms of officers working a specialized mission unit to select and screen out officers who may be unprepared to participate in the specialized unit. The pre -screening mechanisms shall continue to include, at a minimum, the following: (a) whether the officer is current on his/her firearms certification and other service weapons training; (b) whether the officer has received adequate training and demonstrated that he or she has a history of judicious and proficient use of force; and (c) whether the officer is generally fit for patrol duty and capable of achieving the relevant objectives of the specialized unit.	<ol style="list-style-type: none"> Existence of adequate pre-screening mechanisms for officers, including: <ol style="list-style-type: none"> methods for confirming that qualification in firearms and service weapons certification is current; determining adequacy of training and history of reasonable uses of force; and fitness for patrol duty and fitness for specific objectives of special mission unit. 	<ol style="list-style-type: none"> ≥95% of Specialized Mission Unit officers currently qualified in firearms and service weapons certification; documentary evidence that checks on qualification have been made. ≥95% of Specialized Mission Unit officers have received adequate training and demonstrated that he or she has a history of judicious and proficient use of force; documentary evidence that checks on qualification have been made. ≥95% of Specialized Mission Unit officers are generally fit for patrol duties and capable of achieving relevant objectives of the specialized unit; documentary evidence that checks on qualification have been made. 	<ol style="list-style-type: none"> Review records of Specialized Mission Units. Review personnel files, disciplinary history and training records of officers assigned to Specialized Mission Units. Review position announcements. Interview supervisors and commanders of SMUs.
151	MPD shall continue to screen officers who are interested in participating in specialized mission units to develop and maintain a pool of seasoned and competent officers with exemplary records and up-to-date training.	<ol style="list-style-type: none"> Existence of continuing process for screening officers interested in joining Special Mission Units. 	<ol style="list-style-type: none"> MPD maintains continuous application and screening process for SMUs. 	<ol style="list-style-type: none"> Review Specialized Mission Unit personnel files Other documentation prepared and maintained by Specialized Mission Unit supervisors.
152	MPD shall continue to require sufficient advance notice of participating officers to all specialized unit leadership to identify the need for enhanced supervision or tailor patrol activities in light of the capacities of the volunteer officers.	<ol style="list-style-type: none"> Sufficient advance information about officers participating in SMUs provided to unit supervisors to identify need for enhanced supervision and tailoring officer activities. 	<ol style="list-style-type: none"> Advance information provided for ≥95% of officers who have volunteered for SMUs that identify factors that <ul style="list-style-type: none"> require enhanced supervision adjustment of patrol activities 	<ol style="list-style-type: none"> Review SMU records. Review MPD personnel records. Review Internal MPD communications re officers volunteering for SMUs.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
153	MPD shall continue to disqualify for service on a specialized mission unit any officer that has frequently used questionable force or generated numerous credible complaints alleging excessive force.	1. Disqualification of SMU officers and officer-candidates who have frequently used questionable force or generated numerous credible complaints alleging excessive force.	1. No more than 5% of SMU officers have records that show evidence of having frequently used questionable force, or been the subject of numerous, credible excessive force complaints.	1. Review personnel records of SMU members. 2. Review MPD documents reflecting criteria for recruiting, appointing, and discharging SMU officers. 3. Review other relevant SMU records.
154	MPD shall continue to provide sufficient number of skilled supervisors to ensure adequate supervision of officers assigned to a specialized mission unit. Additionally, MPD shall continue to readily identify in the appropriate organizational chart and all specialized mission unit material, the Command-level official responsible for overseeing specialized mission unit activities.	1. Sufficient number of skilled supervisors assigned to SMUs to ensure adequate supervision. 2. Proper identification, in organization charts and SMU materials, of responsible Command-level officials.	1. Maintenance of appropriate supervisor/officer ratio. 2. ≥95% of MPD organization charts and SMU materials clearly identify responsible Command-level official.	1. Review of SMU rosters and personnel lists. 2. Review of relevant organization charts and SMU documents and materials. 3. Review personnel files of SMU supervisors. 4. Interview command staff.
155	MPD shall continue to give clear instructions to sergeants and other supervisory officers who volunteer, or are assigned to a specialized mission unit that they maintain their supervisory responsibilities while volunteering. MPD shall continue to provide clear instructions to these supervisors regarding appropriate supervision and coordination when more than one sergeant or supervisor is present.	1. Clear instructions in effect for all sergeants and supervisory officers assigned to SMUs to maintain supervisory responsibilities. 2. Clear instructions to supervisors regarding appropriate supervision and coordination when more than one sergeant/supervisor present	1. Written instructions disseminated to sergeants and other supervisory personnel assigned to SMUs to maintain supervisory responsibilities 2. Written instructions disseminated to sergeants and other supervisors assigned to SMUs regarding appropriate supervision and coordination among sergeants/supervisors	1. Review written protocols extending to all SMUs. 2. Review specific protocols for individual SMUs. 3. Monitor selected SMU activities to ensure plans, procedures, and protocols are being followed. 4. Monitor SMU roll calls. 5. Review SMU operations plans.
156	MPD shall continue to provide specialized pre-service training to specialized mission unit participants to ensure compliance with current Fourth Amendment, Equal Protection law, and address the desired knowledge, skills, and abilities of the officers participating in the program.	1. Specialized pre-service training to ensure <ul style="list-style-type: none"> • knowledge of 4th Amendment requirements • knowledge of equal protection law • specific knowledge, skills, abilities of unit members. 	1. Creation of appropriate, specified training materials. 2. Provision of high-quality specific training for SMU unit members addressing these subject areas. 3. ≥95% of SMU officers receive training in these subject areas.	1. Review of lessons plans and other training materials. 2. Monitor SMU training sessions. 3. Review training records of SMU officers.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
157	MPD shall continue to monitor all activities of specialized mission unit participants to include, at a minimum, enforcement actions, uses of force, and complaints.	1. Continued monitoring all SMU activities, including enforcement actions, uses of force, complaints	1. MPD has active monitoring program that includes monitoring of SMU activities. 2. MPD monitoring and auditing program includes reviews of ≥95% of SMU officers and considers enforcement actions, uses of force, and complaints generated by SMU activities.	1. Review OPR records reflecting internal reviews and audits of SMU programs and units. 2. Review of FIT investigations. 3. Review of misconduct investigations.
158	MPD shall continue its system of informing specialized mission unit supervisors within 24 hours of any complaint about the conduct of an officer on specialized mission unit duty. Additionally, MPD shall continue to track specifically all activities relating to officers participating in the specialized mission unit, including enforcement actions, complaints, and all misconduct investigations, to enable supervisors to determine whether particular officers should be allowed to continue to participate in the specialized mission unit duty. Investigations of specialized mission unit uses of force should be consistent with the provisions outlined in Section III(B) of this Agreement.	1. Maintaining system of prompt (24-hour) notification of SMU supervisors for complaints against SMU officers. 2. Special tracking of activities of all officers in SMU units <ul style="list-style-type: none"> • enforcement actions • complaints • misconduct investigations 3. Investigation of SMU member activities follows MPD rules and procedures for investigating uses of force and allegations of misconduct	1. MPD maintains system in which supervisors notified of complaints against SMU members within 24 hours in ≥95% of cases. 2. MPD monitoring and auditing program includes reviews of ≥95% of SMU officers and considers enforcement actions, uses of force, and complaints generated by SMU activities. 3. Investigation of SMU members follows MPD rules for use of force and misconduct investigations in ≥95% of investigations.	1. Review specific documents and materials documenting such notifications maintained by SMU supervisors and in other MPD record systems. 2. Review monitoring and auditing program as well as special tracking for SMU officers. 3. Review FIT investigations. 4. Review chain of command use of force investigations. 5. Review misconduct investigations.
159	Within 120 days, MPD shall develop a plan, subject to the approval of DOJ, to limit the total number of hours an officer may work in any twenty-four hour period and in any seven- day period to prevent officer fatigue. The parties acknowledge that implementation of the plan may take into account limitations of current labor agreements, if any.	1. Development of plan to limit officer hours during 24-hour and 7-day periods to avoid officer fatigue.	1. Development of work limitation plan. 2. MPD has initiated procedures to ensure plan is being followed. 3. MPD periodically audits deployment of SMUs to ensure procedures are being followed.	1. Review MPD plan. 2. Monitor implementation of MPD plan. 3. Periodic review of internal MPD checks to ensure plan is being followed 4. Review daily work details.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	IX. PUBLIC INFORMATION			
160	MPD shall prepare quarterly public reports that include aggregate statistics of MPD use of force incidents broken down by MPD districts covering each of the geographic areas of the City, indicating the race/ethnicity of the subject of force. These aggregate numbers shall include the number of use of force incidents broken down by weapon used and enforcement actions taken in connection with the use of force. The report shall include statistical information regarding use of force investigations conducted, including the outcome. The report shall also include the total number of complaints of excessive force received, broken down by MPD Districts, and the number of complaints held exonerated, sustained, insufficient facts, and unfounded.	1. MPD quarterly reports including information described in ¶ 160.	1. Quarterly reports issued by MPD that include information described in ¶ 160. 2. Quarterly reports made publicly available.	1. Review MPD quarterly reports. 2. Monitor MPD website.
	X. MONITORING, REPORTING, AND IMPLEMENTATION			
	A. Independent Monitoring			
161	Within 90 days after entry of this Agreement, the City, MPD and DOJ shall together select a Monitor who shall review and report on MPD's implementation of, and assist with MPD's compliance with, this Agreement. If the parties are unable to agree on a Monitor, each party shall submit two names of persons who have experience as a law enforcement officer, as a law enforcement practices expert or monitor, or as a Federal, state, or county prosecutor or judge along with resumes or curricula vitae and cost proposals to a third party neutral, selected with the assistance of the Federal Mediation and Conciliation Service, and the third party neutral shall appoint the Monitor from among the names of qualified persons submitted.	1. Selection of monitor	2. Selection of monitor completed and contract signed, March 28, 2002	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
162	The Monitor shall not be retained by any current or future litigant or claimant in a claim or suit against the City, MPD, or its officers. The Monitor shall not issue statements or make findings with regard to any act or omission of the City, MPD, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any case brought by any party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement.	NA	NA	NA
163	The Monitor, at any time, may associate such additional persons or entities as are reasonably necessary to perform the monitoring tasks specified by this Agreement. The Monitor shall notify in writing DOJ and the City if and when such additional persons or entities are selected for association by the Monitor. The notice shall identify and describe the qualifications of the person or entity to be associated and the monitoring task to be performed.	NA	NA	NA
164	The City and MPD shall bear all reasonable fees and costs of the Monitor. In selecting the Monitor, DOJ, the City and MPD recognize the importance of ensuring that the fees and costs borne by the City and MPD are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Monitor. In the event that any dispute arises regarding the payment of the Monitor's fees and costs, the City, MPD and DOJ and the Monitor shall attempt to resolve such dispute cooperatively.	NA	NA	NA
165	The Monitor shall only have the duties, responsibilities and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or take over the role and duties of the Mayor, City Council, or Chief of Police.	NA	NA	NA
166	The Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement. The Monitor may not modify, amend, diminish, or expand this Agreement.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
167	The City and MPD shall provide the Monitor with full and unrestricted access to all MPD and City staff, facilities, and documents (including databases) necessary to carry out the duties assigned to MPD by this Agreement. The Monitor's right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. The Monitor shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or DOJ, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.	1. Full and unrestricted access to all staff, facilities, and documents, including databases.	1. Full and unrestricted access in response to 100% of OIM requests, except where the lack of access has been fully explained and deemed by the OIM to be acceptable	1. History of requests and responses
168	In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with the City, MPD and DOJ.	NA	NA	NA
169	In order to monitor and report on MPD's implementation of each substantive provision of this Agreement, the Monitor shall conduct the reviews specified in paragraphs 171 and 172 and such additional reviews as the Monitor deems appropriate. The Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement.	NA	NA	NA
170	In order to monitor and report on MPD's implementation of this Agreement, the Monitor, among other things, shall regularly review and evaluate the quality and timeliness of:	NA	NA	NA
a	MPD employee use of force investigations, including investigations conducted by the Districts, UFRB , OPR, and FIT, pursuant to Section III(B).	NA	NA	NA
b	disciplinary and non-disciplinary actions related to officer use of force.	NA	NA	NA
c	use of force reports.	NA	NA	NA
d	analyses of data concerning use of force, pursuant to paragraphs 61 and 67; and any actions taken pursuant to paragraph 105.	NA	NA	NA
e	complaints and resulting investigations of excessive use of force.	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
	In performing its obligations under this Agreement, the Monitor shall, where appropriate, employ appropriate sampling techniques.	NA	NA	NA
171	The Monitor, inter alia, shall review and evaluate the quality and timeliness of appropriate samples of use of force and misconduct investigations, disciplinary and non-disciplinary actions, ordered as a result of a misconduct investigation; data contained in the PPMS; and appropriate samples of Use of Force Incident reports, canine search and injury reports.	NA	NA	NA
172	Subject to the limitations set forth in this paragraph, MPD shall reopen for further investigation any misconduct investigation the Monitor determines to be incomplete. The Monitor shall provide written instructions for completing the investigation. The Monitor shall exercise this authority so that any directive to reopen an investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any misconduct investigation which has been adjudicated or otherwise disposed, and the disposition has been officially communicated to the officer who is the subject of the investigation.	1. Requirement eliminated by modification of the MOA – see November 18, 2003 letter from Shanetta Y. Cutlar to Chief Ramsey.		NA
	B. MPD Compliance Coordinator			
173	The parties agree that MPD shall hire and retain, or reassign a current MPD employee, for the duration of this Agreement, as an MPD Compliance Coordinator. The Compliance Coordinator shall serve as a liaison between MPD, the Monitor and DOJ, and shall assist with MPD's compliance with this Agreement. At a minimum, the Compliance Coordinator shall: (a) coordinate MPD compliance and implementation activities of this Agreement; (b) facilitate the provision of data, documents and other access to MPD employees and material to the Monitor and DOJ as needed; (c) ensure that all documents and records are maintained as provided in this Agreement; and (d) assist in assigning compliance tasks to MPD personnel, as directed by MPD Chief of Police or his designee.	1. Assignment of an MPD Compliance coordinator with the responsibilities described in ¶ 173.	1. Assignment of an MPD Compliance Coordinator with the responsibilities described in ¶ 173.	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
174	The MPD Compliance Coordinator shall take primary responsibility for collecting information to provide MPD's status reports specified in paragraph 175.	1. MPD Compliance Coordinator responsible for collecting information included in MPD's status reports to DOJ and OIM per ¶ 175.	1. Compliance Coordinator effective in gathering information to be included in status reports.	1. Review MPD status reports. 2. Discussions with Compliance Coordinator.
	C. Reports and Records			
175	Between 90 and 120 days following the effective date of this Agreement, and every three months thereafter until this Agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this Agreement.	1. Quarterly status reports filed with DOJ and MPD delineating all steps taken during the reporting period to comply with each provision of this Agreement.	1. Quarterly status reports filed with DOJ and MPD delineating all steps taken during the reporting period to comply with each provision of this Agreement.	1. Review MPD status reports. 2. Discussions with Compliance Coordinator.
176	During the term of this Agreement, the City and MPD shall maintain all records documenting compliance with the terms of this Agreement and all documents required by or developed pursuant to this Agreement. The City and MPD shall maintain all use of force investigation files for at least ten years from the date of the incident. The City and MPD shall maintain an officer's training records during the officer's employment with MPD and for three years thereafter (unless required to be maintained for a longer period of applicable law).	1. Maintenance of all records documenting compliance with terms of the MOA and all documents required under the MOA. 2. Maintenance of officers' training records during employment and for three years thereafter.	1. Maintenance of all records documenting compliance with terms of the MOA and all documents required under the MOA. 2. Maintenance of training records for ≥95% of officers during employment and for three years thereafter.	1. Review Compliance Coordinator records. 2. Review personnel and training records.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
177	DOJ shall continue to have full and unrestricted access to any City and MPD documents (including databases), staff, and facilities that are relevant to evaluate compliance with this Agreement, except any documents protected by the attorney-client privilege. Should the City or MPD decline to provide the Monitor with access to a document based on attorney-client privilege, the City shall provide the Monitor and DOJ with a log describing the document. DOJ's right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. This Agreement does not authorize, nor shall it be construed to authorize, access to any MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, MPD, and the Monitor. DOJ shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or the Monitor, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.			
178	DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts.			
179	The Monitor shall issue quarterly public reports detailing the City's and MPD's compliance with and implementation of this Agreement. The Monitor may issue reports more frequently if the Monitor determines it appropriate to do so. These reports shall not include information specifically identifying any individual officer. Before issuing a report, the Monitor shall provide a draft to the parties for review to determine if any factual errors have been made, and shall consider the Parties' responses and then promptly issue the report.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
180	<p>The Monitor may testify in any action brought to enforce this Agreement regarding any matter relating to the implementation or enforcement of the Agreement. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of the City, MPD, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees. The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records. The Monitor shall not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. Provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.</p>			
	D. Implementation, Termination, and Enforcement			
181	<p>This Agreement shall become effective upon signature by all Parties. The City and MPD shall implement immediately all provisions of this Agreement which involve the continuation of current Department policies, procedures, and practices. Within 180 days of the effective date of this Agreement, unless otherwise specified, the City and MPD shall implement the provisions of this Agreement.</p>			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
182	The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. The burden shall be on the City and MPD to demonstrate that it has substantially complied with each of the provisions of the Agreement and maintained substantial compliance for at least two years. For the purposes of this paragraph, “substantial compliance” means there has been performance of the material terms of this Agreement. Materiality shall be determined by reference to the overall objectives of this Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.			
183	The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement.			
184	This Agreement is enforceable through specific performance in Federal Court. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
185	In the event MPD or the City fail to fulfill any obligation under this Agreement, DOJ shall, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to MPD and the City. MPD and the City shall have 30 days from receipt of such notice to cure the failure. At the end of the 30-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to MPD or the City, file an action in the United States District Court for the District of Columbia (the “Federal Court Action”) against MPD and the City for breach of contract and any other appropriate causes of action and may seek specific performance and any other appropriate form of relief.			
186	In any matter requiring its approval under this Agreement, DOJ shall not unreasonably withhold any such approval. DOJ shall respond in a complete and timely manner to any submission submitted by the City or MPD for approval, and shall fully outline any bases for disapproval, together with an indication of the changes required in order for approval to be given. DOJ shall provide its approval or disapproval of all matters in writing. All communications regarding approvals required by this Agreement shall take place in such a manner so as not to interfere with or delay compliance with any obligation contained in the Agreement.			
187	In addition to any other notice it may provide, DOJ shall send copies of any correspondence containing a notice of a failure to approve any submission by the City or the MPD, or a notice of a failure to fulfill obligations under this Agreement to MPD’s General Counsel.			
188	In connection with the Federal Court Action, MPD and the City agree as follows:			
a	The City and MPD shall stipulate to subject matter and in personal jurisdiction and to venue.			
b	The City and MPD agree that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the Corporation Counsel of the City shall be deemed good and sufficient service upon the City and MPD.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
c	The City and MPD hereby waive the right to file, and agree not to file or otherwise assert, any motion to dismiss (except for failure to state a claim), to stay or otherwise defer, a Federal Court Action alleging a failure to fulfill any obligation under this Agreement.			
d	The City and MPD agree to a trial of the Federal Court Action alleging a failure to fulfill any obligation under this Agreement commencing (a) 120 days after service of the summons and complaint as set forth above, or (b) the Court's earliest availability, whichever is later. The parties agree that discovery in the Federal Court Action alleging a failure to fulfill any obligation under this Agreement may begin within 15 days after service of the summons and complaint. The parties agree to submit all discovery requests and to schedule all depositions within 75 days after the service of the summons and complaint.			
189	In the event, the Court finds that the City or MPD has engaged in a material breach of the Agreement, the parties hereby stipulate that they shall move jointly for the Court to enter the Agreement and any modifications pursuant to paragraph 194, as an order of the court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.			
190	Nothing in this Agreement shall preclude DOJ, after complying with paragraph 185 (provision of notice and an opportunity to cure), from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of excessive force in addition to or in lieu of the Federal Court Action described above. In the event that any such action is filed, the City and MPD hereby waive, agree not to assert, any defense to that action based on statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement shall preclude DOJ from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of unlawful conduct other than excessive force. Nothing in this Agreement shall preclude DOJ from filing an action under any other provision of law.			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
191	Nothing in this Agreement shall be construed to require an expenditure, obligation, or contract in violation of the Anti-Deficiency Act, 31 U.S.C. §1341 et seq. The District's obligations shall be subject to the availability of appropriated funds (including funds obtained from grants and contracts) as follows:			
a	To the extent made necessary by lack of funds, beginning for fiscal year 2002, the district may obtain deferral of compliance with an obligation of this Agreement until its next annual budget cycle if, as soon as the District knows or should know of the possibility of the event, it provides in writing to DOJ a statement which shows the following:			
i	that it included in its annual budget act as adopted by the Council of the District of Columbia and submitted to the President for transmission to the Congress pursuant to section 446 of the D.C. Self-Government and Governmental Reorganization Act, D.C. Code §47-304 (1997), sufficient money to carry out such objective;			
ii	that it made diligent efforts to obtain Congressional enactment of that part of the budget act;			
iii	that it made diligent efforts to identify and utilize grant and contract funds available to the City from federal and private funding sources to meet obligations under this Agreement (DOJ will assist the City to identify potential Department of Justice grants, or other funding sources, for which MPD may be eligible to apply and will provide MPD with appropriate technical assistance regarding any related application process);			
iv	that it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Agreement as such) together with the amount of money tied to performing such obligation; and			

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES
v	that Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in the appropriation of MPD, OCCR, or any other agency with specific obligations under this Agreement as shown in the Council's budget act without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation left an insufficient amount to carry out that obligation.			
b	The Mayor and MPD shall make diligent efforts to safeguard all appropriated funds available to meet obligations under this Agreement from re-programming.			
	E. Compliance			
192	This Agreement is a public document and shall be posted on the websites of the City or MPD and of the Special Litigation Section of the Civil Rights Division of DOJ.	1. MOA posted on MPD's Web site.	1. MOA posted on MPD's Web site.	1. MPD Web site.
193	The City and MPD agree that they shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.			
	F. Modifications			
194	The Parties may jointly agree, in writing, to modify this Agreement.	NA	NA	NA